Supreme Court, U.S.
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No.

In The
Supreme Court of the United States

JAMES T. WALKER,

Petitioner,

v.

CENTRE INSURANCE COMPANY and
ZC STERLING INSURANCE AGENCY, INC.,

Respondents.

On Petition For A Writ Of Certiorari
To The Maryland Court Of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Petitioner's due process rights were violated under the Administrative Procedures Act (APA) and the Code of Maryland Regulations (COMAR)?

2. Whether the Maryland Court of Appeals ("the Lower Court") erred in utilizing Maryland Insurance Article §2-204 (c) as the operative statute for service of Maryland Insurance Administration (MIA) orders resulting from administrative hearings?

3. Whether, pursuant to Maryland Insurance Article §2-215 and COMAR regulations §§31.02.01.05.05B and 31.02.01.05.05C, the 30-day filing period for a petition for judicial review begins to run on the date the MIA order resulting from the hearing is mailed to or received by the affected party?

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PETITION FOR WRIT OF CERTIORARI

The Maryland Court of Appeals ("the Lower Court"), disposition of the Petitioner's two cases was incorrect and warrants further review because of two main reasons. First, in making its ruling, the lower Court violated the Due Process Clause of the Fourteen Amendment to the U.S. Constitution. Second, the lower Court departed from the accepted and usual course of judicial proceedings by not adhering to common canons of statutory construction and interpretation.

OPINIONS BELOW

The April 28, 2006 opinion of the Maryland Court of Special Appeals appears herein in the appendix (App. 2). The January 9, 2007 opinion of the Maryland Court of Appeals appears herein in the appendix (App.15). The March 9, 2007 order of the Maryland Court of Appeals denying Petitioner's motion for reconsideration is unreported and appears herein in the appendix (App.34).

STATEMENT OF JURISDICTION

The judgment of the Maryland Court of Appeals was entered on January 9, 2007. The Petitioner timely filed a motion for reconsideration on February 9, 2007, which was denied on March 9, 2007. This Court has jurisdiction under U.S.C. § 1257(a).

STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the Constitution states, in relevant part, that: "No State shall..... deprive any person of life, liberty, or property, without due process of law[.]"

STATUTORY PROVISIONS INVOLVED

Maryland Insurance Article §2-204 provides for the issuance of orders resulting from decisions made by the MIA Commissioner on insurance industry compliance matters. This section of the Article provides, in relevant part, that :

"(c) Service.- An order or notice may be served on a person by: (1) mail[illegible] to the person at the last known principal place of business of the person, as listed in the records of the Commissioner; or (2) otherwise delivering it to the person."

Maryland Insurance Article §2-215 states, in relevant part, that: "An appeal under this subtitle may be taken only from....an order resulting from a hearing. To take an appeal, a person shall file a petition for judicial review with the appropriate circuit court within 30 days after (1) the order resulting from the hearing was served on the persons entitled to receive it."

REGULATIONS INVOLVED

COMAR regulation §31.02.01.05B provides, in relevant part, that: " "Notices, decisions, orders, and other documents issued by the Administration or the Office may be served on a person by: (1) Personal delivery to the person; (2) Mailing a copy of the document, first class, postage prepaid, to the person's address of record on file with the Administration..."

COMAR regulation §31.02.01.05 C provides that: "Service under §B of this regulation is effective upon receipt of the notice, decision, order or other document. In the absence of evidence to the contrary, it is presumed that a document served by mail in accordance with §B of this regulation is received by the addressee 3 business days after the date the document was mailed."

COMAR regulation §31.02.01.12 provides, in relevant part, that: "The final order is effective when issued, unless a different date is specified in the decision."

MARYLAND RULES INVOLVED

Maryland Rule 7-203 provides, in relevant part, that:

"(a)(3) **Generally.** Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of: (1) the date of the

order or action of which review is sought; (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or (3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner."

ACTS INVOVLED

Section 10-221(b) of the Maryland Administrative Procedures Act provides, in relevant part, that: "A written statement of appeal rights shall be included with the decision..."

STATEMENT OF THE CASE

These two cases arise out of the unfortunate occurrence of a tornado, which touched down in La Plata, Maryland on April 28, 2002. The tornado destroyed the Petitioner's home and personal property. In response to this incident, he filed several claims with his homeowner's insurance carrier and agent, respectively: Centre Insurance Company, Inc. and Z.C. Sterling Insurance Agency, Inc. He only received some benefits under his homeowner's insurance policy. As a result, the Petitioner filed many administrative complaints with the Maryland Insurance Administration ("MIA") charging that Centre violated the Maryland Insurance Article by the manner in which it handled his claims. The claims were accepted by MIA, which delegated the authority to have them addressed at a hearing before the Office of Administrative Hearings (OAH).

1. Case No. 52

In October 2002, the Petitioner filed a complaint with the MIA, asserting that Centre violated Maryland law by the manner in which it handled his claims (in particular, the fact that some of his claims were denied). In January 2003, the

MIA notified the Petitioner that it had failed to find any violations by Centre of the Maryland Insurance Article. The Petitioner then sought review of the MIA's decision. The parties entered into mediation before an Administrative Law Judge ("ALJ"). As a result of the mediation, on June 11, 2003, the parties entered into a settlement agreement. In October 2003 and February 2004, the Petitioner filed additional complaints with the MIA, asserting that Centre had failed to cover his claimed losses and had failed to comply with the settlement agreement. The MIA notified the Petitioner in January and May 2004, respectively that it had again failed to find any violations by Centre. The Petitioner requested administrative hearings in both instances. The claims were consolidated and referred to the OAH. On July 28 and 29, 2004, the OAH held a hearing. On September 27, 2004, the ALJ issued an order and decision, upholding in part and denying in part the Petitioner's complaint. The order was originally dated and mailed on September 27, 2004. However, on October 14, 2004, the ALJ mailed an amended version which superseded the prior order. For the purposes of this case, the parties have agreed that October 14, 2004 was the operative mailing date. Section 2-215(d) (1) of the Insurance Article states :

> "(d) *Filing petition for judicial review.* — To take an appeal, a person shall file a petition for judicial review with the appropriate circuit court within 30 days after:(1) the order resulting from the hearing was served on the persons entitled to receive it; (2) the order of the Commissioner denying rehearing or reargument was served on the persons entitled to receive it; or (3) the refusal of the Commissioner to grant a hearing."

The process under § 2-215(d)(1) is explained by COMAR §31.01.02.05B which states, in relevant part, that:

> ":..... order or notice may be served on a person by: (1) mailing it to the person at the last known principal place of business of the person, as listed in the records of the

Commissioner; or (2) otherwise delivering it to the person" Service of the order is explained by COMAR §31.01.02.05C, which states, in relevant part, that: "Service is effective upon receipt."

The order was mailed to the parties on October 14, 2004. It is uncontroverted that Petitioner did not receive the order until October 20, 2004. On November 19, 2004, the Petitioner filed a petition for judicial review in the Circuit Court for Charles County. Centre then filed a motion to dismiss the Petitioner's petition. Centre argued that, pursuant to §2-215(d) of the Insurance Article, a petition for judicial review must be filed within 30 days after such a petitioner for judicial review is served with the order and that § 2-204(c) of the Insurance Article defines service as the *mailing* of an order. Therefore, Centre argued that the Petitioner filed his petition in an untimely manner, 36 days after the order had been mailed (October 14, 2004 -November 19, 2004). The Petitioner asserted, conversely, that the operative date for service was the date he received the order, which occurred on October 20, 2004, which would mean that he filed his petition within the required 30-day period. The Circuit Court found in favor of Centre, holding that service was effective upon mailing. On April 20, 2005, the Circuit Court filed an order dismissing Petitioner's appeal of the administrative order. The Petitioner then timely appealed to the Court of Special Appeals. On April 28, 2006, the intermediate appellate court filed its opinion, reversing the Circuit Court's decision. The court agreed with the Petitioner's argument that, under Maryland Rule 7-203(a)(3) the 30-day time limit for filing a petition for judicial review began to run on the date that he received the ALJ's order and decision. "*J.T.W.*, 168 Md. App. at 497, 897 A.2d at 291. The court referenced §2-215(d) of the Insurance Article, finding that "J.T.W. was required to file a petition for judicial review within thirty days following service of the order resulting from the hearing." *J.T.W.*, 168Md. App. at 497, 897 A.2d at 292. Additionally, the intermediate appellate court cited to

Rockwood Casualty Insurance Co. v. Uninsured Employers' Fund, 385 Md. 99, 867 A.2d1026 (2005), in support of the premise that "the term 'serve' implies actual receipt." *J.T.W.*, The Petitioner asserted that the notice mailed with the order contained a statement stating that he "had 30 days from delivery" to file his petition. The court concluded that "the requirement that a petition for judicial review be filed within thirty days after the order 'was served on the persons entitled to receive it,' implies that the party must have actually received the order. Ins. § 2-215(d)(1). Consequently, 'notice [is] required by law to be received by the petitioner,' and the thirty day limit begins to run 'the date the petitioner receive[s] notice of the agency's order or action.' Md. Rule 7-203(a)(3)."*J.T.W.*, 168 Md. App. at 498, 897 A.2d at 292. Centre timely filed a petition for certiorari, which the Maryland Court of Appeals granted on August 29, 2006. *Centre Ins. Co. v. J.T.W.*, 394 Md. 307, 905 A.2d 842 (2006).

2. Case No. 56

On September 14, 2004, the Petitioner filed another complaint with the MIA alleging that Centre violated the Insurance Article by failing to reimburse him for costs associated with the demolition of what remained of his La Plata home after the tornado. The MIA found no violations by Centre. On May 4, 2005, the Petitioner requested an administrative hearing. A hearing was held by the OAH on September 15, 2005. On October 18, 2005, the ALJ issued and mailed an order and decision, finding in favor of Centre. The Petitioner indicated that he received the order in the mail on October 21, 2005. On November 18, 2005, the Petitioner filed a petition pursuant to the notice of appeals statement which states that:

> "A party aggrieved by this final decision of the Maryland Insurance Administration may file a petition for judicial review with the Circuit Court for Baltimore City, or if the party is an individual, to the circuit court

> where the individual resides, within thirty (30) days after delivery of the decision."

On December 8, 2005, and January 13, 2006, Centre filed motions to dismiss, which the Circuit Court granted on March 30, 2006. The Petitioner then timely filed an appeal to the Court of Special Appeals. Prior to the intermediate appellate court hearing the matter, Centre filed a petition for writ of certiorari in the Maryland Court of Appeals Court. on September 8, 2006, that Court granted certiorari. *See Centre Ins. Co. v. J.T.W.*, 394 Md. 307, 905 A.2d 842 (2006). That Court consolidated the two cases on appeal (No. 52 and No. 56) because each case purportedly raised the same issue and held that:

> "under §§2-204(c) and 2-215(d)(1) of the Insurance Article, the 30-day filing period for a relevant petition for judicial review of such an administrative decision begins on the date that the order is *mailed* to the affected party. Therefore, J.T.W. did not comply with the requirement for timely filing in either of his appeals."

The Court reversed the judgment of the Court of Special Appeals in case No.52 and affirmed the decision of the Circuit Court for Charles County in case No.56.

REASONS FOR GRANTING THE PETITION

I. THE LOWER COURT VIOLATED THE DUE PROCESS CLAUSE OF THE U.S. CONSTITUTION WHICH REQUIRES THIS COURT'S PROTECTION.

According to the Fourteenth Amendment to the Constitution of the United States, no State shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The lower Court violated this clause by not considering both the review right statements that came with the petitions, which stated that the Petitioner had "within (30) days after delivery of the decision to file a petition for judicial review, and the Code of Maryland Regulations

(COMAR), specifically §§31.02.01.0S.05C, which states that "service of orders are effective upon receipt?" These two violations require this Court's attention and protection. [Emphasis Added]

A. The Petitioner was Entitled to a Determination Under §10-221(b)(2) of the Administrative Procedures Act (APA) as to Whether His Petitions for Judicial Review were Filed Within 30 Days After Delivery of the MIA Orders.

Section 10-221(b)(2) of Maryland's Administrative Procedures Act states, in relevant part, that a "written statement of appeal rights shall be included with the decision." In accordance with that Act, the MIA included the following appeal rights statement with the final orders:

> "A party aggrieved by this final decision of the Maryland Insurance Administration may file a petition for judicial review with the Circuit Court for Baltimore City, or if the party is an individual, to the circuit court where the individual resides, within thirty (30) days after delivery of the decision.'"

The lower Court alluded to this statement in its decision, but did not use it in its "analysis of the statutory law." In doing so, the lower Court violated the Petitioner's due process rights. At a minimum, since pursuant to Section 10-221(b)(2) of the APA the notice was required, the Petitioner was entitled to a determination from the lower Court as to whether he filed his petition for review within 30 days after he actually received or was delivered the order. *Plocher v. Commissioner of Public Safety*, A03-1572, 681 N.W.2d 698 (Minn. App. 07/29/04). The *Plocher* Court concluded that it was:

> "indefensible to allow the Petitioner's petition for review to be dismissed as untimely solely because it was not filed within 30 days after the notice was mailed."

B. The Petitioner was Entitled to a Determination as to Whether He Timely Filed His Petitions for Judicial Review Pursuant to COMAR Regulations §§§ 31.02.01.05B, 31.02.01.05C and 31.02.01.12.

The MIA promulgated COMAR regulations §§§ 31.02.01.05B, 31.02.01.05B C and 31.02.01.12, to provide for the "service" of orders resulting from hearings. Section 31.02.01.02.05B of COMAR identifies the methods that can be used for service of those orders, while §31.02.01.02.05C of COMAR stipulates when *service is effective.* That regulation stipulated that service under §B "*is effective upon receipt* of the orders and in the absence of evidence to the contrary, it is presumed that an order or other document served by mail in accordance with §B of this regulation is *received* by the addressee 3 business days after the date the document was mailed" [Emphasis Added]. Since MIA sent the orders by mail and the Petitioner produced uncontroverted evidence showing when he received them, he was entitled to a determination from the lower Court as to whether he timely filed his petition for judicial review pursuant to these COMAR regulations. These regulations and issues were discussed in the Petitioner's brief and raised during oral arguments in the lower Court, but were ignored by that Court in its final analysis. In doing so, the Petitioner's due process rights were violated.

II. THE LOWER COURT'S DECISION THREATENS ESTABLISHED PROCEDURES UNDER THE ADMINISTRATIVE PROCEDURES ACT AND IT WILL HAVE A SIGNIFICANT IMPACT ON BOTH STATE AND FEDERAL AGENCIES.

The lower Court ignoring or not considering the notice of appeals rights statement in its analysis of the

issues that were raised in these cases will have significant consequences on not only the Petitioner but all individuals, at the state and federal levels, who are involved in administrative proceedings that require judicial review by the courts under the APA. This Act is a law under which both federal and state agencies, like the MIA, create the rules and regulations necessary to implement and enforce major pertinent legislative acts, which govern how agencies propose and establish regulations. The APA also provides a process for the courts to directly review agency decisions. As such, it is an important source of authority within state and federal administrative law that should be considered by the Courts to avoid violation of the due process clause of the U.S. Constitution.

The purpose of the notice of appeal rights statement is to ensure that the aggrieved party is made aware of his appeal rights under the law. Since the APA requires that it be included in the final agency decision, the lower Court should have at least considered the time limitations spelled out in that statement to determine if the Petitioner filed his petitions timely. The state of Maryland has over 50 state agencies. If one were to multiply that number by the number of states in this country and the number of administrative proceedings which could be taking place pursuant to the APA, the ruling could significantly impact the process. The ruling would also impact administrative proceedings of agencies at the Federal level.

III. THE LOWER COURT FAILED TO ADHERE TO COMMON CANONS OF STATUTORY INTERPRETION AND CONSTRUCTION.

A. The Decision Conflicts with and Renders Superfluous All Relevant Maryland Insurance Statutes.

In making its decision, the lower Court purportedly read and interpreted §2-215(d)(1) in the context of the statutory scheme of the Insurance Article by harmonizing the

definition of "service" in §2-204(c) with the term "served on" as it was utilized in §2-215(d)(1). In doing so, it did not adhere to common canons of statutory construction and interpretation which require that statutory text '... be read so that no word, clause, sentence or phrase is rendered superfluous or nugatory." *Collins*, 383 Md. at 691, 861 A.2d at 732 (quoting *James v. Butler*, 378 Md.683, 696, 838 A.2d 1180, 1187 (2003). The lower Court's ruling conflicts with and renders superfluous essential language in §2-215 of the Ins. Article:

a. § 2-215(a)(1)

Section 2-215(a) (1) states in relevant part that "an appeal under this subtitle may be taken only from an "order resulting from a hearing"[Emphasis Added]. The lower Court's use of this subtitle for [compliance] orders issued under §2-204(c) of the Ins. Article extends its application beyond what the Maryland Legislature intended and makes the language "may be taken only from an order resulting from a hearing" superfluous.

b. § 2-215(d)(1)

Section 2-215(d)(1) states in relevant part: "a petition for judicial review shall be filed within thirty days after the order resulting from a hearing is "served on the persons entitled to receive it." The lower court's ruling permitting or requiring that the 30-day period begin on the date the [*hearing*] order *is* mailed provides a lesser standard than what is required under the statute. If the Maryland Legislature intended some lesser standard, it would have only required the Commissioner to send or mail the order to the affected person by regular mail. Consequently, the requirement "to serve on the person entitled to receive it" is rendered superfluous by the lower Court's ruling.

B. The Lower Court Erred in Utilizing §2-204(C) of the Insurance Article as the Operative Statute for Service of MIA Orders Resulting from

Hearings. The Decision Leads to Illogical and Absurd Results.

The lower Court made the following ruling:

"under §§204(c) and 2-215(d)(1) of the Insurance Article, the 30-day filing period for a relevant petition for judicial review of such an administrative decision begins on the date that the order is *mailed* to the affected party."

In utilizing §2-204(c) of the Ins. Article, the lower Court did not adhere to the cardinal rule of statutory interpretation, which requires that it ascertain and effectuate the intent of the Legislature. *See Collins v. State,* 383 M d. 684, 688, 861 A.2d727, 730 (2004) and statutory construction, which requires it to begin with the plain language of the statute. *Deville v. State,* 383 Md. 217, 223, 858 A.2d 484, 487 (2004). Furthermore, it did not adhere to the requirement that it

> "……..may neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute; nor may it construe the statute with forced or subtle interpretations that limit or extend its application."

Price v. State, 378 Md. 378, 387, 835 A.2d 1221, 1226 (2003).

In § 2-204(c), the Legislature is presumed to have meant what it said and said what it meant in providing service requirements for [compliance] orders. *Arundel Corp. v. Marie,* 383 Md. 489, 502, 860 A.2d 886, 894 (2004). The decision of the lower court to use § 2-204(c) as the "operative" statue for providing service of orders resulting from hearings is misplaced. These provisions, as outlined in the statute, are for [compliance] orders, not orders resulting form hearings. Section 2-204(c) states that a [compliance] order issued by the Commissioner may be served by mailing it to the person at the last *known* principal place of *business* of the person, as listed in the records of the Commissioner. Applying this statute for

[hearing] orders and for persons who do not own insurance businesses makes the phrase last *known* principal place *of business* superfluous [Emphasis Added]. The above language is clearly unequivocal; it states that: "an order issued under this statute may be served on the person at the "last known principal place of business of the person, as listed in the records of the Commissioner." There is no reference to hearings or orders resulting from hearings in this section of the insurance article and it did not indicate that the order may be served on persons at their place of residence as implied by the lower Court's ruling.

Applying this subtitle to homeowners or persons who normally don't or would be expected to have a place of business would lead to absurd and illogical results. These individuals would never be served.

C. The Decision Conflicts with and Renders Superfluous All Relevant COMAR Regulations

Although MIA promulgated COMAR Regulations for the purpose of implementing the statutory mandates under the Insurance Article, the lower Court ignored those regulations in its analysis. These regulations provide for the "service" of both [hearing] and [compliance] orders issued by the MIA. The lower Court's decision conflicts with and renders superfluous two main COMAR regulations:

a. COMAR § 31.02.01.05C

Section 31.02.01.05C of the regulation states in relevant part: "service" of notices, orders and other documents is "effective upon receipt....." The lower court's ruling that an order resulting from a hearing is effective only when it is mailed directly conflicts with this provision and makes it superfluous.

b. COMAR § 31.02.1.12

Section **31.02.01.12** of the regulation states in relevant part: "the final order is effective when issued, unless a different date is specified in the decision." [Emphasis Added]. The lower Court's ruling that the [hearing] order is only effective when it is mailed conflicts with this regulation and renders the language "unless a different date is specified in the decision" superfluous.

D. The Lower Court Read into the Insurance Article What the Maryland Legislature Apparently Left Out.

Normal canons of statutory construction and interpretation prohibited the lower Court from assuming "authority to read into an act what the Legislature apparently deliberately left out." Price, at 387-88, 835 A.2d at 1226 (citations omitted); *Goff v. State,* 387 Md. 327, 342, 875 A.2d 132, 141 (2005); *Pete v. State,* 384 Md. 47, 57 -58, 862 A.2d 4 19, 425 (2004). When the lower Court made its decision based on the argument that "holding that service required the *receipt* of the order could lead to unreasonable or illogical results, i.e., service might never be able to be accomplished," it actually read into §2-215(d)(1) what the Maryland Legislature apparently or deliberately left out. The insurance statutes are silent about how MIA should proceed when service of orders are not accomplished. The lower Court reasoned that "if the individual to whom an order was mailed happened to be out of the country for several months or years he or she would not be deemed to have been served because they had not actually *received* the order." The Petitioner agrees, but asserts that service may also not be accomplished when MIA inadvertently does not mail the order or the order is lost in the mail. Either of these situations could lead to unreasonable or illogical results. However, because the statutes are silent with respect to this issue, the lower Court should not have used this as a basis for its decision. Reading into the statutes

what the Legislature apparently deliberately left out goes contrary to this Court's canons of statutory interpretation and construction. Furthermore, the lower Court's holding that a "requirement of *"receipt"* of the order could lead to unreasonable or illogical results" means that all relevant insurance articles and COMAR regulations, such as §2-204(c)(2) and COMAR.31.02.01.05, which require receipt of MIA orders, would lead to unreasonable or illogical results. If that is so, then all of the relevant rules of civil procedures, insurance statutes and regulations would have to be changed. Pursuant to §214(b) (1) of the Insurance Article, the ALJ is required to issue a decision and order within 30 days after the hearing. If the affected party deliberately decides to leave the country to go on a long extended vacation in order to not be available to be served within reasonable time period after the ALJ's decision, then it could be reasonably assumed that that party would be trying to avoid service of the hearing order. Although this issue is not addressed in the language of §2-215, in such cases, it could also be construed that when a person deliberately ignores or avoids being served by the MIA, then that would be the equivalent to being served and appropriate legal steps could be taken. *See State v.* McCallum, 321 Md. 451, 458, 583 A.2d 250, 253 (1991) (per curiam) (Chasanow, J., concurring). Although the Insurance Articles fails to address this issue, the COMAR regulation does. This regulation states, in relevant part, that

> "Service under §B of this regulation *is effective upon receipt* of the notice, decision, order or other document. In the absence of evidence to the contrary, it is presumed that a document served by mail in accordance with §B of this regulation is received by the addressee 3 business days after the date the document was mailed."[Emphasis Added]

The regulation essentially stipulates that it is presumed that an order served by mail is received by the affected party 3

business days after the date the document was mailed, unless there is evidence to the contrary. The regulation takes a solution into account for minor problems in being served an order or decision due to an accident, medical reasons or when the mail is not picked up on a daily basis due to some extenuating circumstances by the expression " in the absence of evidence to the contrary."

E. The Lower Court Failed to Go Beyond the Words of the Relevant Statutes to Determine Legislative Intent.

The briefs filed by each party, the COSA Ruling, and the oral arguments indicated clear differences between the parties in their interpretations of the §2-204 (c) and whether it should be applied in the context of §2-215. Because of the differences, the lower Court's job was to resolve them in light of the legislative intent, using all the resources and tools of statutory construction at its disposal. *See Collins v. State,* 383 M d. 684, 688, 861 A.2d 727, 730 (2004). Despite the apparent ambiguity the lower Court, in making the Ruling, did not go beyond the text of §§2-204(c) and 2-215(d)(1) to determine legislative intent. Essentially, the lower Court failed to use all the resources and tools of statutory construction, such as, other provisions of the Insurance Article (i.e. §2-204(c)(2)), the COMAR provisions, MIA Procedures, and the Oral Arguments.

IV. THE DECISION BELOW CONFLICTS WITH MARYLAND RULE 7-203(a)(3).

Md. Rule 7-203(a)(3) states, in relevant part, that:

> "Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:..... the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner."

With regards to that Rule, the lower Court concluded that: "the Legislature has ..otherwise provided by statute

(specifically § 2-204(c) of the Insurance Article) and, accordingly, notice was not required by law to be *received* by J.T.W. under the statutory scheme of the relevant sections of the Insurance Article."[Emphasis Added] This is clearly in error. Utilizing § 2-204(c)of the Insurance Article in the context of Md. Rule 7-203(a)(3) is in contrast to what the Legislature intended. Md. Rule 7-203(a)(3) was implemented to provide time requirements for filing a petition for judicial review of decision or orders resulting from hearings of contested cases. The Rule does not apply for compliance orders issued by the MIA Commissioner under §2-204.

CONCLUSION

The petition for certiorari should be granted.

RESPECTFULLY SUBMITTED, this the 6th day of August 2007.

JAMES T. WALKER, *PRO SE*

136 West Quail Lane

La Plata, Maryland 20646

(301) 654-6376

No. _____

In The
Supreme Court of the United States

JAMES T. WALKER,

Petitioner,

vs.

CENTRE INSURANCE COMPANY ET AL.,

Respondents.

On Petition For A Writ Of Certiorari
To The Maryland Court Of Appeals

APPENDIX

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 446

SEPTEMBER TERM, 2005

J.T.W.

v.

CENTRE INSURANCE COMPANY ET AL.

Hollander,
Kenney,
Sharer,
JJ.

Opinion by Kenney, J.

Filed: April 28, 2006

Appellant, J.T.W.,[1] appeals the decision of the Circuit Court for Charles County dismissing his petition for judicial review of a decision by the Maryland Insurance Administration in favor of appellee, Centre Insurance Company. He presents one question for our review:

> Did the Circuit Court Judge Err in Dismissing Appellant's Petition for Judicial Review as Untimely?

For the following reasons, we shall vacate the circuit court's judgment.

FACTUAL AND PROCEDURAL HISTORY

In April 2002, a tornado swept through La Plata in Charles County, damaging J.T.W.'s home and destroying various items of personal property. Disputes about the proper amount of coverage under J.T.W.'s insurance policy with Centre resulted in a settlement agreement in June 2003. In October 2003 and March 2004, J.T.W. filed complaints with the Maryland Insurance Administration ("the Administration"), challenging Centre's compliance with the settlement agreement and the terms of the insurance policy. The Administration determined that Centre had not violated the Insurance Code. After J.T.W. requested hearings on the Administration's decision, the matters were consolidated and referred to the Office of Administrative Hearings ("OAH").

After a hearing on July 28-29, 2004, the administrative law judge upheld J.T.W.'s complaint in part. OAH informed J.T.W. of the administrative law judge's decision in a letter dated October 14, 2004. The letter stated that it superseded an earlier letter, and that the enclosed decision was "the final decision of the Maryland Insurance Administration." The

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[1] According to the decision of the administrative law judge, "[t]he Complainant's name has been redacted because the [Maryland Insurance Administration] sealed the file to preserve the confidentiality of any information."

letter informed J.T.W. of his right to judicial review in the circuit court:

> Any party aggrieved by this Final Decision contained in the Insurance Commissioner's Order on Hearing may file an appeal to the Circuit Court for Baltimore City, or if the party is an individual, to the circuit court where the individual resides. The appeal must be filed within thirty (30) days of mailing or delivery by filing an original and a copy of a petition for judicial review with the circuit court.

The administrative law judge's decision also included a statement of "review rights":

> A party aggrieved by this final decision of the Maryland Insurance Administration may file a petition for judicial review with the Circuit Court for Baltimore City, or if the party is an individual, to the circuit court where the individual resides, within thirty (30) days after delivery of the decision.

The letter in which the order was enclosed was mailed to J.T.W.'s La Plata address. It is undisputed that OAH mailed the letter and order on October 14, 2004, and that they were received by J.T.W. on October 20, 2004. J.T.W. filed a petition for judicial review in the Circuit Court for Charles County on November 19, 2004. The Maryland Insurance Commissioner joined the case as a party by filing a response to J.T.W.'s petition.

Centre moved to dismiss J.T.W.'s appeal on the basis that his petition for judicial review was untimely. Centre contended that because OAH had mailed the letter and decision on October 14, but J.T.W. had not filed his petition for judicial review until November 19, his filing failed to comply with the thirty day limit on time to appeal. In response, J.T.W. stated that he no longer resided at the La Plata address, which he described as a "vacant lot." According to J.T.W., he did not receive the letter and

decision until October 20, when he retrieved the mail from the La Plata address. He contended that the thirty day limit began to run on that date, not the date of mailing.

The court held a hearing on April 14, 2004. J.T.W. argued that the thirty day limit began to run on the date of "delivery," i.e., the date he received the administrative law judge's decision. As authority, he pointed to statements in the letter and decision indicating that he had thirty days from the date of "delivery" to file a petition for judicial review. He also contended that his interpretation of the time limit was in accord with the relevant statutory law.

The court noted that statements by the administrative law judge were not authoritative on the point, and stated that the relevant statute "clearly state[s] 30 days after service. Service is mailing under the code." The court stated that it had no jurisdiction when there was an untimely petition for judicial review. Accordingly, it granted Centre's motion to dismiss, issuing an order to that effect the same day. J.T.W. noted this appeal on April 28, 2004.

DISCUSSION

Maryland Rule 7-202(a) states that "[a] person seeking judicial review [of an agency decision] shall file a petition for judicial review in a circuit court authorized to provide the review." Maryland Rule 7-203(a) states:

> Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:
>
> (1) the date of the order or action of which review is sought;
>
> (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or

> (3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

J.T.W. contends that in this case "notice was required by law to be received by the petitioner," and thus, the date he received the Administration's decision triggered the thirty day time limit. Md. Rule 7-203(a)(3). Not surprisingly, Centre and the Commissioner argue that "notice was required by law to be sent to the petitioner," and therefore the date of mailing triggered the limit on time for the filing of a petition for judicial review. Md. Rule 7-203(a)(2). We agree with J.T.W. that the limit on his time to file began to run the date he received the administrative law judge's decision and order.

The time limit on the filing of a petition for judicial review of a decision of the Maryland Insurance Commissioner is provided for in Md. Code (1995, 2003 Repl. Vol.), § 2-215(d) of the Insurance Article ("Ins."), which states:

> To take an appeal, a person shall file a petition for judicial review with the appropriate circuit court within 30 days after:
>
> (1) the order resulting from the hearing was served on the persons entitled to receive it;
>
> (2) the order of the Commissioner denying rehearing or reargument was served on the persons entitled to receive it; or
>
> (3) the refusal of the Commissioner to grant a hearing.

Thus, in order to obtain judicial review, J.T.W. was required to file a petition for judicial review within thirty days following service of the order resulting from the hearing. Ins. § 2- 215(d)(1).

In *Rockwood Cas. Ins. Co. v. Uninsured Employers' Fund*, 385 Md. 99, 867 A.2d 1026 (2005), the Court of Appeals

concluded that the term "serve" implies actual receipt. *Rockwood* involved application of Ins. § 19-406(a), which required that, to cancel a workers' compensation insurance policy, the insured must "serve[]on the employer, by personal service or registered mail addressed to the last known address of the employer, a notice of intention to cancel the policy." Ins. § 19-406(a) (1997). The Court of Appeals determined that cancellation of a policy could be accomplished only by the insured's actual receipt of the notice:

> Section 19-406 of the Insurance Article requires the insurer to *serve* the employer with notice and gives the insurer two ways to accomplish service: personal service or service by certified mail. To "serve" is defined as, "[t]o make legal delivery of (a notice or process) . . . [t]o present (a person) with a notice or process as required by law . . . ." Black's Law Dictionary 1399 (8th ed. 2004). The term implies actual receipt. If the Legislature intended some lesser standard, it could have just required the insurer to *send* or *mail* the notice to the employer by regular mail. Instead, it requires the insurer *to serve* the notice by personal delivery or by certified mail.

Id. at 109-110 (footnote omitted).

The requirement that a petition for judicial review be filed within thirty days after the order "was served on the persons entitled to receive it," implies that the party must have actually received the order. Ins. § 2-215(d)(1). Consequently, "notice [is] required by law to be received by the petitioner," and the thirty day limit begins to run "the date the petitioner receive[s] notice of the agency's order or action." Md. Rule 7- 203(a)(3).

Centre cites to *Kim v. Comptroller of the Treasury*, 350 Md. 527, 714 A.2d 176 (1998), which involved application of Maryland Rule 7-203(a). In *Kim*, the Maryland Tax Court mailed its order to Kim pursuant to a statute requiring that "[t]he clerk of the Tax Court shall certify the order in an

appeal and mail a copy of the certified order to: (1) each party to the appeal; and (2) the tax determining agency from which the appeal is taken." Md. Code (1988, 1997 Repl. Vol.), § 13-529(c) of the Tax-General Article ("Tax-Gen."). The Court stated:

> In the instant case, the Tax Court was required by law to send its written order to Kim and the Comptroller. . . . Therefore, under the statute and Rule 7-203(a)(2), the relevant date governing the timeliness of an action for judicial review was the date the written order of the Tax Court was filed and mailed to the parties. . . . Thus, Kim's petition for judicial review should have been filed within 30 days after [the date of mailing].

Kim, 350 Md. at 533. The result in *Kim* does not dictate the outcome here because, whereas the statute in *Kim* required the clerk to "mail a copy of the certified order," Tax-Gen. § 13- 529(c), the controlling statute in this case states that the time limitation begins to run when the order "was served on" the parties. Ins. § 2-215(d)(1).

Section 2-214(b)(2) of the Insurance Article states that, following a hearing before the Commissioner[2] and the issuance of an order resulting from the hearing,[3] "[t]he Commissioner shall serve a copy of the order on the same persons that were served notice of the hearing." Insurance § 2-204(c) provides for service of orders or notices by the Commissioner: "An order or notice may be served on a person by: (1) mailing it to the person at the last known principal place of business of the person, as listed in the records of the Commissioner; or (2) otherwise delivering it to

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[2] Section 2-210 of the Insurance Article provides for hearings before the Commissioner.

[3] Section 2-214(b) of the Insurance Article requires the Commissioner to issue an order within thirty days after a hearing.

the person." In the case of a hearing conducted by OAH,[4] Code of Maryland Regulations ("COMAR") 31.02.02.10.C. states: "[OAH] shall send the administrative law judge's proposed or final decision directly to the parties and the Commissioner." Ins. § 2-204(c) and COMAR 31.02.02.10.C. describe acceptable methods of service of the order resulting from a hearing. Those provisions do not, however, alter the requirement of Ins. § 2-215(d)(1) that a petition for judicial review must be filed within thirty days after the order "was served on the persons entitled to receive it."

We conclude that J.T.W. was served with the Commission's decision on October 20, 2004. He filed his petition for judicial review on November 19, 2004, the thirtieth day after service. Accordingly, the circuit court erred in dismissing his appeal as untimely. Centre also asserts that the circuit court was required to dismiss J.T.W.'s appeal because of the absence of a necessary party. Centre contends that, because J.T.W. and his wife own the property at issue as tenants by the entirety, and because they are joint parties to the insurance policy, J.T.W. could not unilaterally petition for judicial review. In his reply brief, J.T.W. notes that this issue was not raised before the circuit court. Centre argues, however, that "the failure to join a necessary party in a lower [proceeding] is a defect which may be addressed for the first time on appeal."

Section 10-222(a)(1) of the State Government Article states that "a party who is aggrieved by the final decision in a contested case is entitled to judicial review of the decision." "In order to be entitled to judicial review in a contested case,

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[4] Section 10-205(a)(1) of the State Government Article of the Maryland Code (1984, 2004 Repl. Vol.), and COMAR 31.02.02.01.B, permit the Commissioner to delegate the authority to hold a contested case hearing to OAH. The Commissioner may, at his or her discretion, delegate to OAH the authority to issue "[p]roposed findings of fact, proposed conclusions of law, and a proposed order" following the hearing, or "[f]inal findings of fact, final conclusions of law, and a final order." COMAR 31.02.02.01.B.2).

one must both be a 'party' to the administrative proceedings and be 'aggrieved' by the final decision of the agency." *Med. Waste Assocs., Inc. v. Maryland Waste Coalition, Inc.*, 327 Md. 596, 611, 612 A.2d 241 (1992). The Court of Appeals has stated a broad standard for establishing oneself as a "party" to an administrative proceeding:

> "Bearing in mind that the format for proceedings before administrative agencies is intentionally designed to be informal so as to encourage citizen participation, we think that absent a reasonable agency or other regulation providing for a more formal method of becoming a party, anyone clearly identifying himself to the agency for the record as having an interest in the outcome of a matter being considered by the agency, thereby becomes a party to the proceedings."

Id. (quoting *Morris v. Howard Research & Dev. Corp.*, 278 Md. 417, 423, 365 A.2d 34 (1976)). The Court of Appeals in *Med. Waste Assocs.* noted that previous case law had established that a person can become a party to an administrative proceeding by merely appearing and testifying at a hearing, submitting the person's name as a protestant, submitting a letter of protest into evidence, or identifying himself or herself on the record as a party. *Med. Waste Assocs.*, 327 Md. at 612.

In this case, the record of the hearing before the administrative law judge indicates that J.T.W.'s wife was present at the hearing and was sworn in as a witness. She testified before the administrative law judge and was cross-examined by Centre. The administrative law judge's decision indicates that he viewed J.T.W.'s wife as a party. In a footnote on the first page of the decision, the administrative law judge states: "JTW was the named Complainant, however, his wife was alleged to be equally aggrieved by the Licensee's actions. In this decision, reference to the 'Complainants' indicates both, while reference to the

'Complainant' indicates JTW alone." In our view, the presence of J.T.W.'s wife, along with her testimony at the hearing, were sufficient to establish that she was a party at the administrative level, and Centre does not appear to argue otherwise.

Maryland Rule 7-202(a) requires that, to obtain judicial review, a party must "file a petition for judicial review in a circuit court authorized to provide the review." With respect to multiple petitioners, Maryland Rule 7-203(b) provides: "If one party files a timely petition, any other person may file a petition within ten days after the date the agency mailed notice of the filing of the first petition, or within the period set forth in section (a), whichever is later."

A party at the administrative level "'remains a party to the proceedings [including judicial review] until [it] either abandons this status . . . or is dismissed as a party by order . . . generated by a motion to accomplish this result filed by an adverse party . . . .'" *Med. Waste Assocs.*, 327 Md. at 612 (quoting *Morris*, 278 Md. at 423). A party can abandon his or her status as a party by failing to file a responsive pleading to a petition for judicial review. *State Farm Mut. Auto. Ins. Co. v. Ins. Comm'r*, 283 Md. 663, 668-69, 392 A.2d 1114 (1978); *Morris*, 278 Md. at 423. In our view, the same is true of a would-be petitioner. If there are multiple parties on one side at the administrative level, and one of the parties files a petition for judicial review, another party could abandon her status as a party by failing to file a petition. *See Egloff v. County Council of Prince George's County*, 130 Md. App. 113, 128-34, 744 A.2d 1083 (2000) (holding that a party to an administrative proceeding failed to effectively obtain judicial review where the party filed a response to another party's petition, rather than a separate petition).

J.T.W.'s petition for judicial review names only himself, and he does not now dispute Centre's contention that his wife did not petition for judicial review. We are not persuaded that her absence requires dismissal of J.T.W.'s appeal.

In *State Farm*, an insurer sought judicial review of a decision by the Insurance Commissioner. Although the insured was served with copies of its petition and the order for appeal, the insured did not respond and did not appear before the court. The insurer later appealed the court's decision to this Court. We dismissed the appeal for "'want of a necessary party,'" noting that "'the order for appeal does not include Mr. Morris as an appellee nor was service of the order for appeal made upon Morris.'" *State Farm*, 283 Md. at 667. The Court of Appeals reversed. The Court determined that the insured had abandoned his status as a party by failing to respond to the insurer's petition for judicial review. Because he was no longer a party to the case, the insurer was not required to name him as an appellee or effect service on him. Further, the predecessor to Ins. § 2-215(b) and (e) stated:

> Any person who was a party to [an agency] hearing, or whose pecuniary interests are directly and immediately affected by any such order or refusal and who is aggrieved thereby may . . . appeal from such order or hearing or such refusal of a hearing. . . . An appeal taken pursuant to this subsection shall be captioned in the name of the person filing the appeal, as the party appellant, versus the Insurance Commissioner of the State of Maryland, as the party appellee. In all such appeals, the Commissioner shall be a necessary party appellee. In addition to the person filing the appeal and the Commissioner, any other person whose pecuniary interests are or may be directly and immediately affected by the matter on appeal, or who may be aggrieved thereby, upon application to the court, may be deemed an additional party appellant or appellee, as the court directs.

Md. Code (1957, 1972 Repl. Vol.), Art. 48A, §40(1). The Court therefore concluded:

> This provision clearly refutes the holding of the Court of Special Appeals that [the insured] was "a necessary party" entitled to service of the order of appeal to the Court of Special Appeals. Under the language of § 40(1), the Insurance Commissioner was the only *necessary* party to the proceeding in the Baltimore City Court.

State Farm, 283 Md. at 669.

Ins. § 2-215(b), which is entitled "Authorized appellants," currently states: "An appeal under this subtitle may be taken by:

(1) a party to the hearing; or (2) an aggrieved person whose financial interests are directly affected by the order resulting from a hearing or refusal to grant a hearing." Ins. § 2-215(e), entitled "Caption; parties," provides:

> (1) An appeal under this subtitle shall be captioned in accordance with the Maryland Rules.
>
> (2) On application to the court, any person may be added as a party, as the court directs, if:
>
> > (i) the financial interests of the person are or may be directly affected by the matter on appeal; or
> >
> > (ii) the person may be aggrieved by the matter on appeal.

The statute governing judicial review of decisions by the Insurance Commissioner no longer mandates that the Commissioner or any other party is a necessary party. Thus, J.T.W.'s wife's abandonment of her party status did not require the circuit court to dismiss J.T.W.'s appeal of the administrative decision. Nevertheless, to the extent that the wife's interests may be ultimately affected by the appeal, she may, upon "application to the court," be added as a party. Ins. § 2-215(e)(2).

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY VACATED; CASE REMANDED TO THE CIRCUIT COURT FOR PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION.

N THE COURT OF APPEALS OF
MARYLAND
No. 52

September Term, 2006

Centre Insurance Company, et al.
v.
J.T.W

No. 56

September Term, 2006

J.T.W.
v.
Centre Insurance Company, et al.

Bell, C. J.
Raker
Wilner
Cathell
Harrell
Battaglia
Greene,

JJ.

Opinion by Cathell, J.

Filed: January 9, 2007

This opinion addresses two cases before the Court which present a virtually identical issue.[1] The question to be resolved is: When, under Title 2 of Maryland's Insurance Article,[2] does the 30-day filing period for a petition for judicial review of an administrative decision begin?[3] Centre Insurance Company, Inc., Z.C. Insurance Agency, Inc., and the Maryland Insurance Commissioner[4] ("Commissioner")[5]

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[1] We have consolidated the two cases on appeal (No. 52 and No. 56) because each case raises the same issue. The pertinent question presented in a petition for certiorari in case No. 52 was phrased as follows:

> "Did the Court of Special Appeals err in holding that the thirty-day period in which a Petition for Judicial Review of an administrative decision may be timely filed begins only upon actual receipt of the decision, notwithstanding the fact that all that is required by the operative statute, § 2-204(c) of the Insurance Article, is the mailing of the decision by regular first-class mail?"

The question presented in the petition for certiorari in case No. 56 was phrased as follows:

> "Was the Circuit Court correct when it held that the thirty-day period in which a Petition for Judicial Review of a decision of the MIA may be timely filed begins upon mailing of the order, given the fact that all that is required by the operative statute, § 2-204(c) of the Insurance Article, is the mailing of the decision by regular first-class mail?"

[2] Maryland Code (1995, 2003 Repl. Vol.), §§ 2-201 through 2-215 of the Insurance Article are the provisions of the code relevant to the case at bar.

[3] No argument has been raised as to timeliness under the "General Provisions" of Maryland Rule 1-203(c). That rule, if applicable at all, would have no effect on Case No. 52. Nowhere in the record have we found that J.T.W. brought the provisions of Rule 1-203(c) to the attention of the trial judge. Additionally, he did not raise it before this Court. Accordingly, we do not address it in this case.

[4] On January 5, 2005 (Case No. 52) and December 12, 2005 (Case No. 56), respectively, the Commissioner filed a Notice of Intention to Participate, and was joined as an interested party to the proceedings.

argue that the plain language of the Insurance Article provides that the 30-day period begins when the order resulting from an administrative hearing is *mailed*. J.T.W.[6] argues that the 30-day period begins when the order resulting from an administrative hearing is *received* by the affected party. We hold that the plain language of the pertinent statutes provides that, in the context of the relevant sections of the Insurance Article, the 30-day filing period for a petition for judicial review of an administrative decision under §§ 2-204(c) and 2-215(d)(1) begins when the order resulting from a relevant administrative hearing is *mailed*.

I. Facts

This case arises out of the unfortunate occurrence of a tornado, which touched down in La Plata, Maryland on April 28, 2002. The tornado destroyed J.T.W.'s home and personal property. In response to this incident, J.T.W. filed several claims with his homeowner's insurance carrier and agent, respectively: Centre Insurance Company, Inc. and Z.C. Sterling Insurance Agency, Inc. J.T.W. received some benefits under his homeowner's insurance policy, but was not satisfied with the companies' response as a whole. As a result, J.T.W. filed administrative complaints with the Maryland Insurance Administration ("MIA") charging that Centre violated the Insurance Article by the manner in which it handled his claims.

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[5] The parties' respective roles as petitioners and respondents are different in each case. In order to facilitate clarity and simplify our discussion, we shall generally refer in both cases, where the context dictates, to Centre Insurance Company, Inc., Z.C. Sterling Insurance Agency, Inc., and the Commissioner collectively as "Centre" and to J.T.W. as "J.T.W." J.T.W. appears *pro se*.

[6] Throughout the proceedings in these consolidated cases, J.T.W.'s actual name has been redacted and he has been referred to as "J.T.W."

No. 52

In October 2002, J.T.W. filed a complaint with the MIA, asserting that Centre violated Maryland law by the manner in which it handled his claims (in particular, the fact that some of his claims were denied). In January 2003, the MIA notified J.T.W. that it had failed to find any violations by Centre of the Maryland Insurance Article. J.T.W. then sought review of the MIA's decision. The parties entered into mediation before an Administrative Law Judge ("ALJ"). As a result of the mediation, on June 11, 2003, the parties entered into a settlement agreement.

In October 2003 and February 2004, J.T.W. filed additional complaints with the MIA, asserting that Centre had failed to cover his claimed losses and had failed to comply with the settlement agreement. The MIA notified J.T.W. in January and May 2004, respectively, that it had again failed to find any violations by Centre. J.T.W. requested administrative hearings in both instances. The claims were consolidated and referred to the Office of Administrative Hearings ("OAH").[7] On July 28 and 29, 2004, the OAH held a hearing. On September 27, 2004, the ALJ issued an order and decision, upholding in part and denying in part J.T.W.'s complaint.

The order was mailed to the parties on October 14, 2004.[8] It is uncontroverted that J.T.W. did not receive the order until October 20, 2004. On November 19, 2004, J.T.W. filed a petition for judicial review in the Circuit Court for Charles County. Centre then filed a motion to dismiss J.T.W.'s

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[7] Maryland Code (1984, 2004 Repl. Vol.), § 10-205(a)(1) of the State Government Article provides that the MIA is permitted to delegate the authority to hold a hearing to the OAH.

[8] The order was originally dated and mailed on September 27, 2004. However, on October 14, 2004, the ALJ mailed an amended version which superceded the prior order. For the purposes of this case, the parties have agreed that October 14, 2004, is the operative mailing date.

petition. Centre argued that, pursuant to Maryland Code (1995, 2003 Repl. Vol.), § 2-215(d) of the Insurance Article, a petition for judicial review must be filed within 30 days after such a petitioner for judicial review is served with the order,[9] and that Maryland Code (1995, 2003 Repl. Vol.), § 2-204(c) of the Insurance Article defines service as the *mailing* of an order. Therefore, Centre argued that J.T.W. filed his petition in an untimely manner, 36 days after the order had been mailed (October 14, 2004 - November 19, 2004). J.T.W. asserted, conversely, that the operative date for service was his *receipt* of the order. That occurred on October 20, 2004, which would mean that he filed his petition within the required 30-day period. The Circuit Court found in favor of Centre, holding that service was effective upon mailing. On April 20, 2005, the Circuit Court filed an order dismissing J.T.W.'s appeal of the administrative order.

J.T.W. then timely appealed to the Court of Special Appeals. On April 28, 2006, the intermediate appellate court filed its opinion, reversing the Circuit Court's decision. *J.T.W. v. Centre Ins. Co.*, 168 Md. App. 492, 897 A.2d 288 (2006). The court agreed with J.T.W.'s argument that, under

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[9] Maryland Code (1995, 2003 Repl. Vol.), § 2-215(d) of the Insurance Article states: "(d) *Filing petition for judicial review.* — To take an appeal, a person shall file a petition for judicial review with the appropriate circuit court within 30 days after:

(1) the order resulting from the hearing was served on the persons entitled to receive it;

(2) the order of the Commissioner denying rehearing or reargument was served on the persons entitled to receive it; or

(3) the refusal of the Commissioner to grant a hearing." (Bold emphasis added). The process under § 2-215(d)(1) is further explained by § 2-204(c) of the Insurance Article, which states:

"(c) *Service.* — An order or notice may be served on a person by:

(1) mailing it to the person at the last known principal place of business of the person, as listed in the records of the Commissioner; or

(2) otherwise delivering it to the person."

Maryland Rule 7-203(a)(3),[10] the 30-day time limit for filing a petition for judicial review began to run on the date that he received the ALJ's order and decision. *J.T.W.*, 168 Md. App. at 497, 897 A.2d at 291. The court referenced § 2-215(d) of the Insurance Article, finding that "J.T.W. was required to file a petition for judicial review within thirty days following service of the order resulting from the hearing." *J.T.W.*, 168 Md. App. at 497, 897 A.2d at 292. Additionally, the intermediate appellate court cited to *Rockwood Casualty Insurance Co. v. Uninsured Employers' Fund*, 385 Md. 99, 867 A.2d 1026 (2005), in support of the premise that "the term 'serve' implies actual receipt." *J.T.W.*, 168 Md. App. at 497, 897 A.2d at 292. The court concluded, stating:

> "The requirement that a petition for judicial review be filed within thirty days after the order 'was served on the persons entitled to receive it,' implies that the party must have actually received the order. Ins. § 2-215(d)(1). Consequently, 'notice [is] required by law to be received by the petitioner,' and the thirty day limit begins to run 'the date the petitioner receive[s] notice of the agency's order or action.' Md. Rule 7-203(a)(3)."

J.T.W., 168 Md. App. at 498, 897 A.2d at 292. The intermediate appellate court only briefly referenced § 2-204(c) of the Insurance Article (which defines "service") and did not address any impact that it would have upon the

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[10] Maryland Rule 7-203 states:

"(a) **Generally.** Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:

(1) the date o f the order o r action of which review is sought;

(2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or

(3) the date the petitioner received notice of the agency's order or action, if notice w as required by law to be received b y the petitioner."

court's interpretation of § 2-215(d)(1) of the Insurance Article.

Centre timely filed a petition for certiorari, which this Court granted on August 29, 2006. *Centre Ins. Co. v. J.T.W.*, 394 Md. 307, 905 A.2d 842 (2006).

No. 56

On September 14, 2004, J.T.W. filed another complaint with the MIA alleging that Centre violated the Insurance Article by failing to reimburse him for costs associated with the demolition of what remained of his La Plata home after the tornado. The MIA found no violations by Centre. On May 4, 2005, J.T.W. requested an administrative hearing. A hearing was held by the OAH on September 15, 2005. On October 18, 2005, the ALJ issued and mailed an order and decision, finding in favor of Centre. J.T.W. alleges that he received the order in the mail on October 21, 2005.[11] On November 18, 2005, J.T.W. filed a petition for judicial review with the Circuit Court for Charles County, 31 days after the order was mailed and 28 days after he received the order. On December 8, 2005, and January 13, 2006, Centre filed motions to dismiss, which the Circuit Court granted on March 30, 2006.

J.T.W. then timely filed an appeal to the Court of Special Appeals. Prior to the intermediate appellate court hearing the matter, Centre filed a petition for writ of certiorari in this

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[11] J.T.W. asserts that the notice mailed with the order contained a statement reading:

> "'A party aggrieved by this final decision of the Maryland Insurance Administration may file a petition for judicial review with the Circuit Court for Baltimore City, or if the party is an individual, to the circuit court where the individual resides, within thirty (30) days after delivery of the decision.'"

While this statement is misleading considering our determination *infra*, it does not change our analysis of the statutory law.

Court. On September 8, 2006, we granted certiorari. *See Centre Ins. Co. v. J.T.W.*, 394 Md. 307, 905 A.2d 842 (2006).

II. Discussion

The Circuit Court, in both instances, dismissed J.T.W.'s petitions for judicial review as untimely. Delineating *when* the 30-day time period for filing a petition begins under § 2-215(d) is key to our determination. Thus, the crux of this case is the definition of "service," as applicable to § 2-215(d)(1) of the Insurance Article. Because we hold that J.T.W.'s petitions were not filed within the relevant 30-day time period,[12] the Circuit Court (in both instances) was without any recourse – the proceeding was subject to a statute of limitations. *Colao v. County Council of Prince George's County*, 346 Md. 342, 362-64, 697 A.2d 96, 106-07 (1997); *see also Kim v. Comptroller of Treasury*, 350 Md. 527, 536, 714 A.2d 176, 180 (1998).[13] When the petitions were challenged, the trial court was required to dismiss them.

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[12] Again we note that J.T.W. did not raise below, or in this Court, the impact, if any, that Maryland Rule 1-203(c) might have, or the conflict, if any, between the rule and the statute, in respect to case No. 56. Accordingly, we also do not consider that general rule in our resolution of case No. 56.

[13] Judge Wilner, writing for the Court in *Colao*, explained the application of the time period to petitions for judicial review:

> "Lest this result seem harsh or unfair, it is worth remembering that one of the important goals of the new procedure was to make the judicial review process more efficient. The basic battle in these cases is fought at the agency level. Whether acting under an administrative procedures act or under common law principles, the court's role is essentially limited to assuring that the agency acted lawfully, that there was substantial evidence to support its finding, and that it was not arbitrary. . . . Making the 30-day requirement for filing the petition in the nature of an absolute statute of limitations, subject to waiver by failure of a respondent to raise the defense in a proper manner but not subject to discretionary extension, was in furtherance of that objective . . . ."

346 Md. at 364, 697 A.2d at 106-07.

A. Statutory Construction

Our first step in resolving the conflict between the parties is to determine whether the Legislature intended that the term "service," as used in § 2-215(d)(1) of the Insurance Article, requires actual receipt of the order by the affected party or whether the mailing of the order accomplishes service. Our resolution of this issue requires an examination of the statutes involved in the case *sub judice.*

We recently discussed the canons of statutory construction in *Chow v. State*, 393 Md. 431, 903 A.2d 388 (2006):

> "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature. *See Collins v. State*, 383 Md. 684, 688, 861 A.2d 727, 730 (2004). Statutory construction begins with the plain language of the statute, and ordinary, popular understanding of the English language dictates interpretation of its terminology. *Deville v. State*, 383 Md. 217, 223, 858 A.2d 484, 487 (2004).
>
> "In construing the plain language, '[a] court may neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute; nor may it construe the statute with forced or subtle interpretations that limit or extend its application.' *Price v. State*, 378 Md. 378, 387, 835 A.2d 1221, 1226 (2003); *County Council v. Dutcher*, 365 Md. 399, 416-417, 780 A.2d 1137, 1 147 (2001). Statutory text "'should be read so that no word, clause, sentence or phrase is rendered superfluous or nugatory.'" *Collins*, 383 Md. at 691, 861 A.2d at 732 (quoting *James v. Butler*, 378 Md. 683, 696, 838 A.2d 1180, 1187 (20 03)). The plain language of a provision is not interpreted in isolation. Rather, we analyze the statutory scheme as a whole and attempt to harmonize provisions dealing with the same subject so that each may be given effect. *Deville*, 383 Md. at 223, 858 A.2d at 487; *Navarro-*

Monzo v. Washington Adventist, 380 Md. 195, 204, 844 A.2d 406, 411 (2004).

> "If statutory language is unambiguous when construed according to its ordinary and everyday meaning, then we give effect to the statute as it is written. *Collins*, 383 Md. at 688-89, 861 A.2d at 730. 'If there is no ambiguity in that language, either inherently or by reference to other relevant laws or circumstances, the inquiry as to legislative intent ends; we do not need to resort to the various, and sometimes inconsistent, external rules of construction, for "the Legislature is presumed to have meant what it said and said what it meant."' *Arundel Corp. v. Marie*, 383 Md. 489, 502, 860 A.2d 886, 894 (2004) (quoting *Witte v. Azarian*, 369 Md. 518, 525, 801 A.2d 160, 165 (2002))."

Chow, 393 Md. at 443-44, 903 A.2d at 395 (some quotations omitted) (quoting *Kushell v. Dep't of Natural Res.*, 385 Md. 563, 576-77, 870 A.2d 186, 193-94 (2005)); *see also City of Baltimore Dev. Corp. v. Carmel Realty Assoc.*, ___ Md. ___, ___ A.2d ____ (2006) (No. 3, September Term 2006) (filed Nov. 3, 2006). Additionally, we have expounded upon the importance of resolving ambiguity within a statute, stating:

> "In some cases, the statutory text reveals ambiguity, and then the job of this Court is to resolve that ambiguity in light of the legislative intent, using all the resources and tools of statutory construction at our disposal. However, before judges may look to other sources for interpretation, first there must exist an ambiguity within the statute, i.e., two or more reasonable alternative interpretations of the statute. Where the statutory language is free from such ambiguity, courts will neither look beyond the words of the statute itself to determine legislative intent nor add to nor delete words from the statute. Only when faced with ambiguity will courts consider both the literal or usual meaning of the words as well as their meaning in light of the objectives and

> purposes of the enactment. As our predecessors noted, "We cannot assume authority to read into the Act what the Legislature apparently deliberately left out. Judicial construction should only be resorted to when an ambiguity exists." Therefore, the strongly preferred norm of statutory interpretation is to effectuate the plain language of the statutory text.'

Price, at 387-88, 835 A.2d at 12 26 (citations omitted); *Goff v. State*, 387 Md. 327, 342, 875 A .2d 132, 14 1 (2005); *Pete v. State*, 384 Md. 47, 57-58, 862 A.2d 419, 425 (2004)."

Chow, 393 Md. at 444, 903 A.2d at 395. It is also clear that "[w]e avoid a construction of the statute that is unreasonable, illogical, or inconsistent with common sense." *Blake v. State*, 395 Md. 213, 224, 909 A.2d 1020, 1026 (2006) (citing *Gwin v. MVA*, 385 Md. 440, 462, 869 A.2d 822, 835 (2005)); *see Frost v . State*, 336 Md. 125, 137, 647 A.2d 1 06, 112 (1994).

We analyze the contested provisions of Maryland's Insurance Article in the context of the statutory scheme as a whole and construe the plain language so that the various sections of the article do not conflict with one another. *Chow*, 393 Md. at 443, 903 A.2d at 395; *Deville*, 383 Md. at 223, 858 A.2d at 487; *Navarro-Monzo*, 380 Md. at 204, 844 A.2d at 411. Furthermore, the Court recently emphasized in *Walzer v. Osborne*, ___ Md. ___, ___ A.2d ____ (2006) (No. 20, September Term, 2006) (filed Nov. 17, 20 06):

> "In addition, '"the meaning of the plainest language is controlled by the context in which it appears."' *State v. Pagano*, 341 M d. 129, 1 33, 669 A.2d 1339, 1 341 (1996) (citations omitted). As this Court has stated,
>
> > [b]ecause it is part of the context, related statutes or a statutory scheme that fairly bears on the fundamental issue of legislative purpose or goal must also be considered. Thus, not only are we required to interpret the statute as a whole, but, if appropriate, in

> the context of the entire statutory scheme of which it is a part.

Gordon Family P'ship v. Gar on Jer, 348 Md. 129, 138, 702 A.2d 753, 757 (1997) (citation s omitted)."

Walzer, ___ M d. at ___ , ___ A .2d at ____.

B. "Service" in the Context of Title 2 of Maryland's Insurance Article

The Circuit Court, in both cases, dismissed the petitions for judicial review because they were filed in an untimely manner. Section 2-215 of the Insurance Article provides the statutory framework under which such petitions for judicial review are governed.

The plain language of the statute reads in relevant part: "To take an appeal, a person shall file a petition for judicial review with the appropriate circuit court within 30 days after:

(1) the order resulting from the hearing was *served* on the person s entitled to receive it . . . ." § 2-215(d) of the Insurance Article (emphasis added). J.T.W. contends that the term "service," as utilized in § 2-215(d)(1), means actual receipt by the involved party. Under that definition, the 30-day time limit for filing a petition for judicial review, pursuant to the Insurance Article, would begin to run on the date that an individual receives an order resulting from an administrative hearing. Consequently, in the particular circumstances of the case *sub judice*, under the J.T.W.'s interpretation of § 2-215(d)(1), he would have timely filed both of his petitions for judicial review with the Circuit Court. We disagree with this interpretation.

In support of his argument, J.T.W . cites to Maryland Rule 7-203(a), which states in relevant part:

> "Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:

(1) the date of the order or action of which review is sought;

(2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or

(3) the date the petitioner received notice of the agency's order or action, if notice w as required by law to be received b y the petitioner."

J.T.W. asserts that the determinative factor under Rule 7-203(a) is that a petition for judicial review shall be filed within 30 days of the *latest* of the enumerated dates – i.e., in the present circumstances, the date on which J.T.W. *received* notice. Md. Rule 7-203(a)(3). J.T.W., however, faiis to acknowledge that Rule 7-20 3(a) specifically provides qualifications to this requirement, stating: (1) "Except as otherwise provided . . . *by statute* . . . ," (emphasis added) and (2) ". . . if notice was required by law to be received by the petitioner." We find that the Legislature has so otherwise provided by statute (specifically § 2-204(c) of the Insurance Article) and, accordingly, notice was not required by law to be *received* by J.T.W. under the statutory scheme of the relevant sections of the Insurance Article.

Additionally, J.T.W. fails to recognize that this Court, albeit in a slightly different procedural context, has previously ruled on the timeliness of an appeal from an order issued under the Insurance Article. In *Nuger v. State Insurance Commissioner*, 231 Md. 543, 191 A.2d 222 (1963), the Court addressed the time for filing an appeal from an order of the Insurance Commissioner in the context of Maryland Rule B 4, the predecessor rule to Rule 7-203. In that case, the Court was concerned with whether the 30-day period began with the *filing* of an order rather than the *mailing* of the order. *Id.* at 544, 191 A.2d at 223. The Court concluded that an appeal within 30 days of the *mailing* of the order was timely, stating:

> "If notice is required to be sent in e very decision in a contested case, it would seem to bring this case within the exception to the Rule, regardless of the court in which review is sought. The appellee [Commissioner] did in fact send notice of its action, and we hold that the appeal the refrom, within thirty days from its mailing, was timely."*Id.* at 546, 191 A.2d at 224. While *Nuger* is somewhat distinguishable from the case *sub judice*, it does show that this Court interpreted a related 30-day filing period as beginning with the *mailing* of an order. Furthermore, *Nuger* has never been overruled, and continues to represent this Court's interpretation of the statutory law, albeit in a different procedural situation, and in the context of the predecessor Rule B4."

J.T.W. relies, in part, on this Court's decision in *Rockwood Casualty Insurance Co. v. Uninsured Employers' Fund*, 385 Md. 99, 867 A.2d 1 026 (2005). In *Rockwood*, the Court analyzed service under § 19-406 of the Insurance Article, a section relating to workers' compensation. As the Court explained, "Section 19-406 of the Insurance Article requires the insurer to *serve* the employer with notice and gives the insurer two ways to accomplish service: personal service or service by certified mail." *Rockwood*, 385 Md. at 109, 867 A.2d at 1031 (footnote omitted). Specifically, § 19-406 states: "[A]n insurer may not cancel or refuse to renew a workers' compensation insurance policy before its expiration unless, at least 30 days before the date of cancellation or nonrenewal, the insurer: (1) serves on the employer, by personal service or certified mail . . . a notice of intention to cancel or nonrenew the policy . . . ." § 19-406(a) of the Insurance Article.

In interpreting the plain language of § 19-406(a)(1), the *Rockwood* Court first looked to the *Black's Law Dictionary* definition of "serve," which states: "1. To make legal delivery of (a notice or process) . . . . 2. To present (a person) with a notice or process as required by law . . . ." *Black's*

Law Dictionary 1399 (8th ed. 2004); *see also Rockwood*, 385 Md. at 109-10, 867 A .2d at 1032. The Court found that, in the context of the workers' compensation sections, "[t]he term implies actual receipt." *Rockwood*, 385 Md. at 110, 867 A.2d at 1032. Judge Greene, writing for the Court, expounded upon this, stating: "If the Legislature intended some lesser standard, it could have just required the insurer to *send* or *mail* the notice to the employer by regular mail. Instead, it requires the insurer *to serve* the notice by personal delivery or by certified mail." *Id.* Based on its analysis of § 19-40 6(a), the Court concluded: "[W]e hold that § 19-406(a) permits an insurer to choose whether to serve notice of cancellation of insurance b y personal delivery or by certified m ail. Service by certified mail, however, is not complete upon mailing. The statute contemplates actual delivery of notice." *Rockwood*, 385 Md. at 121, 867 A.2d at 1039.

J.T.W. rests his reliance upon *Rockwood* on a misinterpretation of the Court's holding in that case. J.T.W. grasps the Court's statement that "[t]he term [service] implies actual receipt," *id.* at 110, 867 A.2d at 1032, and applies it out of context with the rest of the *Rockwood* holding, ignoring this Court's contrasting of the language there applicable with our comment that if the Legislature had meant a lesser standard to apply it would have "just required the insurer to *send* or *mail* the notice to the employer by regular mail." 385 Md. At 110, 867 A.2d at 1032. In the present case, the Legislature created just that type of *lesser* standard.

The *Rockwood* Court found that the term *serve*, **in the context of § 19-406 of the Insurance Article**, implies actual receipt. This is evident from the fact that § 19-406(a) specifically requires that the insurer serve the notice *by personal delivery* or *by certified mail*. In the case *sub judice*, on the other hand, as we have stated, we are concerned with the term *serve* as it is utilized in § 2-215(d)(1). Placed into context with the rest of Title 2 of the Insurance Article (in

particular, in context with § 2-204(c)) the term *serve*, as used in § 2-215(d)(1), does not imply actual receipt.

Instead, § 2-204(c) of the Insurance Article provides the definition of "service" which is to be applied in the context of the statutory scheme of Title 2 of the Insurance Article. Section 2-2 04(c) states in relevant part:

"An order or notice may be served on a person by:

(1) mailing it to the person at the last known principal place of business of the person, as listed in the records of the Commissioner; or

(2) otherwise delivering it to the person."

The plain language of the statute is clear and unambiguous and reflects the intent of the Legislature. Moreover, it is clearly distinguishable from the statutory language construed in *Rockwood*. As pertinent to Title 2 of the Insurance Article, the Legislature has specifically provided in § 2-204(c) that service of an order may be accomplished by the *mailing* of the order to the involved person.

We must read and interpret § 2-215(d)(1) in the context of the statutory scheme of the Insurance Article as a whole. In doing so, we harmonize the definition of "service" in § 2-204(c) with the term as it is utilized in § 2-215(d)(1). It is unambiguous that service, in that context, may be accomplished by the *mailing* of an order. Thus, we shall give effect to the statute as it is written. *Chow*, 393 Md. at 444, 903 A.2d at 395; *Collins*, 383 Md. at 688-89, 861 A.2d at 730. Additionally, holding that service required the *receipt* of the order could lead to unreasonable or illogical results, i.e., service might never be able to be accomplished. For example, if the individual to whom an order was mailed happened to be out of the country for several months or years he or she would not be deemed to have been served because they had not actually *received* the order. As stated *supra*, we avoid such unreasonable and illogical construction of statutes. *Blake*, 395 Md. at 224, 909 A.2d at 1026 (citing *Gwin*, 385

Md. at 462, 869 A.2d at 83 5); *see Frost*, 336 Md. at 137, 647 A.2d at 112.

J.T.W. also relies on the Court of Special Appeals' holding below, where that court found that:

> "The requirement that a petition for judicial review be filed within thirty days after the order 'was served on the persons entitled to receive it,' implies that the party must have actually received the order. Ins. § 2-215(d)(1). Consequently, 'notice [is] required by law to be received by the petitioner,' and the thirty day limit begins to run 'the date the petitioner receive[s] notice of the agency's order or action.' Md. Rule 7-203(a)(3)."

J.T.W., 168 Md. App. at 498, 897 A.2d at 292.

The intermediate appellate court based its holding on this Court's decision in *Rockwood*. The Court of Special Appeals, how ever, failed to distinguish the *Rockwood* holding, as we have, *supra*. Additionally, the intermediate appellate court did not interpret the Legislature's use of the term *serve* in § 2-215(d)(1) in the context of Title 2 o f the Insurance Article as a whole, especially in light of § 2-204(c). The court briefly mentioned § 2-204(c), but did not apply its definition of how service may be accomplished.

Furthermore, this Court has previously held, in situations similar to that of the case *sub judice*, that service does not always require actual receipt. In *Renehan v. Public Service Commission*, 231 Md. 59, 188 A.2d 566 (1963), the Court addressed the timeliness of an appeal from an order of the Public Service Commission to a Circuit Court. 231 Md. at 61, 188 A.2d at 566. The Court affirmed the Circuit Court for Carroll County's dismissal of a petition for judicial review as untimely. This Court reached its conclusion by analyzing Rule 1101(d)(2), a predecessor rule to Rule 7-203. The Court concluded that service was made by *mailing* the order to the affected party and specifically stated that: "There is no provision of law which requires that notice of the action of

the Public Service Commission be received by a party in order to make it effective." *Renehan*, 231 M d. at 63, 188 A.2d at 568.

In *Lee v. State*, 332 Md. 654, 632 A.2d 1183 (1993), the Court considered whether the State had "complied with the notice requirement of Maryland Rule 4-245(b) in seeking enhanced punishment" of an individual for a second conviction of possession of cocaine. 332 Md. at 656, 632 A.2d at 1184. At the time, Rule 4-425(b) required that the State's Attorney "'serve[] notice of the alleged prior conviction on the defendant or counsel . . . at least 15 days before trial in circuit court . . . .'" *Lee*, 332 Md. at 658, 632 A.2d at 1184 (quoting Md. Rule 4-245(b)). The State's Attorney's office mailed such a notice to the defendant. The defendant, however, argued that he never received the notice and, therefore, was not properly served. *Id.* at 657, 632 at 1184. The Court disagreed with the defendant's contention that Rule 4-245(b) required that notice be received in order to be effective. Construing Maryland Rules 1-3 21 and 4-245(b), the Court held that:

> "The latter rule mandates that the state's attorney *serve* notice at least 15 days prior to trial. This rule, combined with the provision of Rule 1-321 that service is complete upon mailing, make s it clear that service of the enhanced punishment notice must be either hand-delivered 15 days prior to trial or mailed 15 days prior to trial. What Rule 4-245(b) does not require is *receipt* of the notice 15 days prior to trial."

Lee, 332 Md. at 664, 632 A.2d at 1188. Moreover, the Court concluded:

> "If the drafters of the rules had wanted to guarantee that the defendant actually received a copy of the notice 15 days before trial, they would not have used the words 'serves notice' in Rule 4-245. Rather, the rule would have required personal service, certified mail, or some other means of both assuring actual receipt by the

defendant and defining a point from which to measure time."

Lee, 332 Md. at 665, 632 A.2d at 1188.

In the case *sub judice*, unlike in *Rockwood*, the statutory provision in question (§ 2-215(d)(1)) does not provide for personal service or service by certified mail. Moreover, § 2-204(c) defines "service" as mere *mailing*. If the Legislature had wanted "service" in the context of Title 2 of the Insurance Article to require actual receipt of an order by an affected party it would have so provided.

III. Conclusion

In conclusion, we hold that, under §§ 2-204(c) and 2-215(d)(1) of the Insurance Article, the 30-day filing period for a relevant petition for judicial review of such an administrative decision begins on the date that the order is *mailed* to the affected party. Therefore, J.T.W. did not comply with the requirement for timely filing in either of his appeals. We reverse the judgment of the Court of Special Appeals in case No. 52 and affirm the decision of the Circuit Court for Charles County in case No. 56.

IN CASE NO. 52 JUDGMENT OF THE COURT OF SPECIAL APPEALS REVERSED AND CASE REMANDED TO THAT COURT WITH DIRECTIONS TO AFFIRM THE JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY. COSTS IN THIS COURT AND IN THE COURT OF SPECIAL APPEALS TO BE PAID BY JTW. IN CASE NO 56 JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED. COSTS TO BE PAID BY J.T.W.

CENTRE INSURANCE COMPANY, et al.	* In the * Court of * Appeals
v.	* of Maryland * No. 52
J.T.W.	* September *Term, 2006

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JAMES T. WALKER	* In the * Court of * Appeals
v.	* of Maryland * No. 56
CENTRE INSURANCE COMPANY, et al.	* September * Term, 2006

ORDER

The Court having considered J.T.W.'s motion for reconsideration and modification of opinion and J.T.W.'s motion to amend motion for reconsideration and modification of opinion filed in the above-captioned case, it is this 9th day of March, 2007,

ORDERED, by the Court of Appeals of Maryland, that the motions be, and they are hereby, DENIED.

/s/ **Irma S. Raker**
Senior Judge

(2)

FILED
SEP 13 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 07-152

In The

Supreme Court of the United States

JAMES T. WALKER,

Petitioner,

v.

CENTRE INSURANCE COMPANY and
ZC STERLING INSURANCE AGENCY, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF MARYLAND

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Whether the Petitioner has presented compelling reasons to grant the Petition, where the Petitioner never raised, and the Maryland Court of Appeals never considered, any issues of Federal law in its decision, including any claim that the Maryland Insurance Administration violated the Petitioner's procedural due process rights under the Fourteenth Amendment.

II. Whether the Petitioner has presented compelling reasons to grant the Petition where the Maryland Court of Appeals' decision involved the interpretation of state law based upon adequate and independent state law grounds and no federal question was ever reached by the Maryland Court of Appeals.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Respondent No. 1, Z.C. Sterling Agency, Inc. is a California corporation and is private. Z.C. Sterling Corporation is a Delaware corporation and is the parent company of Z.C. Sterling Agency, Inc. Z.C. Sterling Corporation is a private corporation.

Respondent No. 2, Centre Insurance Company, has all of its issued and outstanding shares of voting common stock owned by Centre Solutions Holdings (Delaware), Ltd., a holding company domiciled in Delaware, which in turn is controlled by Centre Solutions (U.S.) Limited, an insurance and reinsurance company domiciled in Bermuda. Centre Solutions (U.S.), Limited, is controlled by Centre Groups Holdings (U.S.) Limited, a holding company domiciled in Delaware, which is in turn controlled by Centre Reinsurance Limited, an insurance and reinsurance company domiciled in Bermuda, which in turn is controlled by Centre Solutions (Bermuda) Limited, an insurance company domiciled in Bermuda, which is in turn controlled by Centre Group Holdings, Limited, a holding company domiciled in Bermuda, which in turn is controlled by Global Assets Holdings Limited, a holding company domiciled in Bermuda, which is ultimately owned by Zurich Financial Services AG, a financial services company domiciled in Switzerland. Each of the preceding entities is privately held. Zurich Insurance Company is domiciled in Switzerland and is publicly traded in Europe.

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INTRODUCTION

The Petitioner in this case has presented no compelling reasons for his Petition for a Writ of Certiorari to be granted in accordance with Supreme Court Rule 10. This case involves the Court of Appeals of Maryland's interpretation of a state statute as to when service is effective upon an individual following an administrative hearing before the Maryland Insurance Administration. The Petitioner never raised, nor did the Court of Appeals ever consider, any issues pertaining to the Petitioner's due process rights based upon either state or federal law. Specifically, the Petitioner did not raise a federal question until he referenced the Fourteenth Amendment in his Petition for Writ of Certiorari. As is clear from the decisions of both the Maryland Court of Special Appeals and the Maryland Court of Appeals, only state law questions were considered below. There has never been a federal aspect to this case, and the Petitioner's seeming allegation that his federal due process claim did not arise until the Maryland Court of Appeals found in the Respondents' favor is ludicrous. Therefore, the Petition should be denied.

STATEMENT OF THE CASE

This case has its genesis in two administrative complaints filed by the Petitioner with the Maryland Insurance Administration (hereinafter "MIA"), in October 2002 (hereinafter "No. 52") and on September 14, 2004 (hereinafter "No. 56").[1] In each, Petitioner charged that Respondents had violated the Insurance Article of the Maryland Code in how they handled various claims made under his homeowner's insurance policy after his home was damaged by a tornado. Pursuant to its statutory grant of authority, the MIA made initial determinations in each case. In both cases, the MIA found in favor of the Respondents, finding no violation of the Insurance Article. Following the MIA's issuance of each of its decisions, the Petitioner requested an administrative hearing, and the matters were referred to the Office of Administrative Hearings (hereinafter "OAH").

In an Order dated October 14, 2004, the OAH found that the Respondents had not violated the provisions of the Insurance Article in No. 52. Petitioner thereafter filed a Petition for Judicial Review in the Circuit Court for Charles County, Maryland on November 19, 2004. The Respondents filed a Motion to Dismiss based upon lack of jurisdiction. The Circuit Court for Charles County granted the Respondents' Motion to Dismiss on April 14, 2005 for want of jurisdiction, concluding that the petition was filed more than thirty days after it had been served on the Petitioner. The Petitioner timely appealed to the Maryland Court of Special Appeals, which reversed the decision of the Circuit Court on April 28, 2006. The Respondents and the Maryland Insurance Commissioner then filed a timely petition for writ of certiorari to the Maryland Court of Appeals.

---

[1] "No.52" and "No.56" refer to the Case Numbers given to the two cases at the Court of Appeals level. For clarity, they have been so designated throughout this Brief in Opposition.

In an Order dated October 18, 2005, the OAH found that the Respondents had not violated the provisions of the Insurance Article in No. 56. Petitioner then filed a Petition for Judicial Review in the Circuit Court for Charles County, Maryland on November 18, 2005, more than thirty days after the OAH's Order was issued. On March 30, 2006, acting upon the Respondents' Motion to Dismiss, the Circuit Court dismissed the Petition for Judicial Review related to No. 56 for lack of jurisdiction because the Petition had been filed more than thirty days after it had been served upon the Petitioner. The Petitioner appealed this decision to the Maryland Court of Special Appeals. Prior to the intermediate appellate court hearing the matter, Centre Insurance Company, Respondent, filed a petition for writ of certiorari in this matter, and the two cases were consolidated by the Maryland Court of Appeals.

In a decision dated January 9, 2007, the Maryland Court of Appeals held that, pursuant to the Insurance Article of the Maryland Code, the 30-day filing period for a petition for judicial review of an administrative decision begins on the date the order is mailed to a party, versus when it is actually received. The Petitioner filed a timely motion for reconsideration on February 9, 2007, which was denied on March 9, 2007. A Petition for Writ of Certiorari to this Court was filed on June 7, 2007.

REASONS FOR DENYING THE PETITION

The decision of the Maryland Court of Appeals below does not implicate a federal question. It was premised solely upon state law grounds. Accordingly, Petitioner has not carried his burden of demonstrating a "compelling reason" for his Petition to be granted. See Sup. Ct. R. 10.

I. The Supreme Court of the United States Does Not Have Jurisdiction to Grant this Petition.

A. The Supreme Court Cannot Entertain Petitions Arising Solely Out of State Law.

The Supreme Court's jurisdiction to review State court decisions is specifically limited by statute as follows:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

28 USC § 1257(a).

The Supreme Court has made clear that it will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision upon review. Adams v. Robertson, 520 U.S. 83, 86 (1997). "It is well settled that this Court will not review a final judgment of a state court unless 'the record as a whole shows either expressly or by clear implication that the federal claim was adequately presented in the state system.'" Board of Directors of Rotary Club Int'l v. Rotary Club of Duarte, 481 U.S. 537, 550 (1987) (quoting Webb v. Webb, 451 U.S. 493, 496-497 (1981)). When "the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper

presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." Board of Directors of Rotary Club Int'l, 451 U.S. at 550 (internal citations omitted).

In the instant case, the issue is whether the Maryland Court of Appeals correctly interpreted Maryland Code Annotated, Insurance Article 2-204, when it determined that service of a decision of the Office of Administrative Hearings is effective upon mailing. Centre Ins. Co. v. J.T.W., 397 Md. 71, 72, 916 A.2d 235, 235 (2007).The Petitioner did not attack the validity of the statute on substantive due process grounds below, nor did he allege that his procedural due process rights were violated when the Circuit Court for Charles County denied his two Petitions for Judicial Review on different occasions after concluding that Petitioner had not filed his Petitions for Judicial Review within the requisite thirty-day period following mailing of the decision.

B. Assuming, arguendo, that Petitioner's Constitutional Challenge was Raised Timely, the Petitioner Fails to Specifically Demonstrate How He Was Denied Procedural Due Process.

"[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV. State action includes all actions created, enforced or regulated by the State. Barry Properties v. Fick Bros., 277 Md. 15, 22-23, 353 A.2d 222, 227 (1976). The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)).

Here, the Petitioner brought claims against the insurance company that had sold him his homeowner's insurance policy for alleged violations of the Insurance Article of the Maryland Code. Although he did not raise a procedural due process argument below, he appears to be arguing in his Petition that he was denied the opportunity to be heard pursuant to the Maryland Administrative Procedures Act, Md. Code Ann., State Gvmt. § 10-201 et seq., or pursuant to the MIA's own regulations codified in the Code of Maryland Regulations ("COMAR"), COMAR 32.01.01.00 et seq. Pet. 8-9. Alternatively, the Petitioner appears to be arguing that the Maryland Court of Appeals' decision as to the interpretation of a state statute violated his due process rights under the Fourteenth Amendment. Pet. 7-8. Each of these arguments is explored in turn below.

1. Even assuming, *arguendo*, that the Maryland Insurance Administration's Notification of Appeal Rights Constitutes a State Action, Petitioner has Failed to Show How He Was Denied Procedural Due Process As He Was Afforded Notice and an Opportunity to Be Heard at the Agency Level.

The Maryland Insurance Administration investigates complaints made by consumers against insurers as to violations of the Insurance Article of the Maryland Code. COMAR 32.02.01.02B (2007). Petitioner made several such complaints against the Respondents. Pursuant to COMAR, the MIA investigated the matter and determined that the Respondents had not violated any provisions of the Insurance Article. Thereafter, the MIA notified the parties of its decisions pursuant to COMAR 31.02.01.05 (2007). Service was effected by mailing the decision to Petitioner's address of record pursuant to COMAR 31.02.01.05B, which provides various modes of notifying parties of the MIA's decision.

including, but not limited to, certified mail, first-class, postage-prepaid mail, personal delivery and service on counsel. COMAR 31.02.01.09 (2007).

The Petitioner timely requested a hearing from both of the MIA's decisions, and hearings were held as a result before the Office of Administrative Hearings. Such administrative hearings are governed by the "contested case" provisions of the Maryland Administrative Procedure Act, Md. Code. Ann., State Govt. §§ 10-201-10-227, and are subject to procedural due process requirements. See COMAR 31.02.01.02C (2007) (treating administrative complaints as contested cases); see also Mehrling v. Nationwide Ins. Co., 371 Md. 40, 44, 806 A.2d 662, 665 (2002) (noting applicability of APA to MIA administrative hearings). All parties were present at the hearing. The Office of Administrative Hearings issued its decisions on behalf of the Maryland Insurance Administration with notice that the Petitioner had thirty days in which to appeal the decision to the Circuit Court in the county where he resided.

The Petitioner fails to allege that the method by which the Maryland Insurance Administration served him with its decision constituted a violation of his due process rights. There is nothing contained in the Petition indicating that the simple mailing of the notice via first class mail did not provide him with adequate notice of the proceedings. The Petitioner instead argues that the thirty-day timeframe for filing an appeal should run from when he receives notice of the decision. As discussed, *infra*, the Court of Appeals entered into a lengthy discourse on statutory interpretation and concluded that Petitioner's rationale was incorrect, and largely impractical, since the MIA would have no way of knowing when the decision was delivered unless it were sent by certified mail, which was not contemplated under the statute.

2. Petitioner Fails to Allege a Cognizable Due Process Claim as to the Circuit Court's Action in Denying His Petition, Since He Was Given Notice and an Opportunity to be Heard.

If the Petitioner was afforded notice and the opportunity to be heard at the administrative agency level, the only remaining possible source for a violation of the Petitioner's procedural due process rights must be an allegation that the Petitioner's due process rights were violated at the Circuit Court level. Due process does not require adherence to any particular procedure and calls for only such procedural protections as the situation demands. Department of Transportation v. Armacost, 299 Md. 392, 416, 474 A.2d 191, 203 (1984). For a hearing to be fair, the parties must be afforded adequate notice and an opportunity to be heard. Vavasori v. Commission on Human Relations, 65 Md. App. 237, 245, 500 A.2d. 307, 311, cert. denied 305 Md. 419, 504 A.2d 1152 (1985). Specifically, the Circuit Court for Charles County denied two Petitions for Judicial Review filed by the Petitioner because he failed to comply with Md. Code Ann., Ins. Sect. 2-204, which required him to file his Petition for Judicial Review in the Circuit Court within thirty days of the decision being mailed by the Maryland Insurance Administration.

The Respondents filed a Motion to Dismiss No. 52 with the Circuit Court for Charles County on January 3, 2005. The Petitioner filed a timely "Request to Deny Respondent's Motion to Dismiss Appeal" on January 7, 2005. The Circuit Court set the matter for a hearing on April 14, 2005. Both parties appeared at the hearing and argued their respective positions. The Circuit Court Judge granted the Motion to Dismiss in No. 52 at the April 14, 2005 hearing.

The Respondents filed a Motion to Dismiss No. 56 on December 8, 2005. The Petitioner filed a timely "Motion to Deny Respondent's Motion to Dismiss" on December 20, 2005. On March 31, 2006, the Circuit Court dismissed No. 56 without a hearing because the Petitioner had failed to file his Petitions within the requisite thirty-day period. In fact, the Petitioner filed his second late Petition for Judicial Review nearly one year after the Circuit Court had denied his first Petition for untimeliness.

Here the Petitioner was afforded notice and an opportunity to be heard with respect to the Motion to Dismiss filed in No. 52. He cannot, therefore, argue that he was denied procedural due process simply because he was displeased with the outcome of the proceeding. With respect to the Motion to Dismiss in No. 56, Maryland law does not require a hearing as of right on Motions to Dismiss. See Md. R. 2-322. However, any party may request a hearing on a motion pursuant to Maryland Rule 2-311(f). See Md. R. 2-311(f) (2007). If such a hearing is requested in writing, a court may not rule upon a dispositive motion without first holding a hearing. However, there is no indication in this case that the Petitioner filed a written Request for Hearing. As such, he had notice and an opportunity to be heard but chose not to avail himself of that option. He cannot now allege that he was denied due process as a result of this choice.

II. The Maryland Court of Appeals is the Ultimate Authority as to Maryland State Law and any State Law Grounds Must First Be Decided by that Court.

A. The Maryland Court of Appeals is the Ultimate Authority as to the Interpretation of Maryland State Law.

The Supreme Court is "bound to accept the interpretation of [state] law by the highest court of that State." Hortonville Joint School District No. 1 v. Hortonville Education Ass'n, 426 U.S. 482, 488 (1976). In this case, the Maryland Court of Appeals was asked to interpret Maryland Code Annotated, Insurance Section 2-204(c). In doing so, the Maryland Court of Appeals concluded that the thirty-day period for filing a petition for judicial review commenced when the administrative agency's decision was mailed to the Petitioner, not when the Petitioner received it, as he had argued below. The Maryland Court of Appeals used Maryland case law in interpreting the meaning of the statute.

Specifically, the Court of Appeals below entered into a lengthy analysis of Section 2-204(c) compared to the various other service of process statutes contained elsewhere in Maryland law in order to "avoid a construction of the statute that is unreasonable, illogical, or inconsistent with common sense." Centre Ins. Co. v. J.T.W., 397 Md. at 81, 916 A.2d at 240 (quoting Blake v. State, 395 Md. 213, 224, 909 A.2d 1020, 1026 (2006) (internal citations omitted). Noting that Maryland law specifies personal service, certified mail, or some similar means of service when actual receipt is necessitated, and, in the absence of similar language in the Insurance Article, the Court held that the appeal period commenced upon mailing of the MIA's decision, not upon receipt thereof. Id. at 88, 916 A.2d at 245.

Where the legal issue is one of statutory interpretation, "[t]he cardinal rule . . . is to ascertain and effectuate the intent of the Legislature. Kushnell v. Dep't of Natural Resources, 385 Md. 563, 576, 870 A.2d 186, 193 (2005). The first step in ascertaining the intent of the Legislature is the careful examination of the plain language of the statute. Id. In so doing, "[a] court may neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute; nor may it

construe the statute with forced or subtle interpretations that limit or extend its application." Id. at 576-77, 870 A.2d at 193 (quoting Price v. State, 378 Md. 378, 387, 835 A.2d 1221, 1226 (2003)). Similarly, a court may neither interpret nor construe a statute in such a way that would yield absurd or illogical results, but instead must "attempt to construe statutes in a common sense manner." Kilmon v. State, 394 Md. 168, 177, 905 A.2d 306, 311 (2006).

Furthermore, of particular import to this case is the principle that the Legislature intends enactments of a complete statutory scheme to be read in harmony. See Smack v. Dep't of Health and Mental Hygiene, 378 Md. 298, 306, 835 A.2d 1175, 1179 (2003) (finding that "where the statute to be construed is a part of an entire statutory scheme, construction of the provisions of the scheme must be done in the context of that scheme"). Therefore "[t]he plain language of a provision is not interpreted in isolation. Rather, we analyze the statutory scheme as a whole and attempt to harmonize provisions dealing with the same subject so that each may be given effect." Kushnell, 385 Md. at 577, 870 A.2d at 193. In the event that two statutes conflict, "the statutes may be harmonized by viewing the more specific statute as an exception to the more general one." Smack, 378 Md. at 306, 835 A.2d at 1179 (quoting Government Employees Ins. Co. v. Ins. Comm'r, 332 Md. 124, 133, 630 A.2d 713, 718 (1993)). Lastly, where the language of the statute is both clear and unambiguous when given its ordinary meaning, there is no justification for further inquiry into the intent of the Legislature because the "[l]egislature is presumed to have meant what it said and said what it meant.'" Kushell, 385 Md. at 577; Arundel Corp. v. Marie, 383 Md. 489, 502, 860 A.2d 886, 894 (2004) (quoting Witte v. Azarian, 369 Md. 518, 525, 801 A.2d 160, 165 (2002)).

Although the Petitioner addresses various subsections of these statutes individually, Respondents submit that, in

accordance with traditional notions of statutory construction, these statutes and rules should be set forth in their entirety and read in harmony with one another.

Maryland Rule 7-203 provides the time requirements for filing a Petition for Judicial Review of any administrative agency decision and provides in pertinent part:

> (a) Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:
>
> (1) the date of the order or action of which review is sought:
>
> (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or
>
> (3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

Md. R. 7-203(a) (2007).

Section 2-215 of the Insurance Article of the Maryland Code outlines the procedures for obtaining judicial review of decisions from the Maryland Insurance Administration. This statute provides, in relevant part, that:

> (d) To take an appeal, a person shall file a petition for judicial review with the appropriate circuit court within 30 days after:
>
> (1) The order resulting from the hearing was served on the persons entitled to receive it.

Md. Code Ann., Ins. § 2-215 (2007).

The final statute at issue in this proceeding is § 2-204 of the Insurance Article, governing orders and notices of the Maryland Insurance Commissioner. It provides, in relevant part, that:

> (c) An order or notice may be served on a person by:
>
> (1) Mailing it to the person at the last known principal place of business of the person, as listed in the records of the Commissioner; or
>
> (2) Otherwise delivering it to the person.

Md. Code Ann., Ins. § 2-204 (2007).

Appellant contends that subsection (a)(3) of Maryland Rule 7-203 is dispositive in this case because it provides that he has 30 days from the date he receives the administrative order to file his Petition for Judicial Review. However, the Maryland Court of Appeals held that Rule 7-203 was inapplicable because Rule 7-203 only applies if no other rule or statute governs the matter. Centre Ins. Co., 397 Md. at 83, 916 A.2d at 242. Here, the Court of Appeals held that the Insurance Article clearly and specifically applied to the matter at hand, and, as a result, Rule 7-203 did not apply. Id.

The plain language of Section 2-204 does not require certified mail, but rather permits service by regular mail. The Administrative Law Judge mailed the administrative order of the MIA to the Petitioner's address of record, which was repeatedly used throughout the administrative review process, and, indeed, Petitioner has never denied receiving the order. The Maryland Court of Appeals has previously held that the term "service" does not automatically require or imply receipt. For example, in Renehan v. Public Serv. Comm'n of Maryland, 231 Md. 59, 188 A.2d 566 (1963), the Maryland Court of Appeals affirmed the decision of the

Circuit Court for Carroll County in dismissing a petition for judicial review as untimely. Recognizing that the issue was controlled by then Rule 1101(d)(2), the Maryland Court of Appeals noted that "[t]here is no provision of law which requires that notice of the action of the Public Service Commission be received by a party in order to make it effective." 231 Md. at 63, 188 A.2d at 567. Instead, the only requirement was that the Commission mail the order to the affected parties. See id. at 62-63, 188 A.2d at 567. Thus, the Maryland Court of Appeals held that "[s]ervice by the Commission of notice of its action . . . was made by the mailing of the copy of the order . . . ." Id. at 63, 188 A.2d at 567.

Similarly, in Lee v. State, 332 Md. 654, 632 A.2d 1183 (1993), the Maryland Court of Appeals addressed whether the term "service" implicitly required receipt, and again held that it did not. Lee v. State, 332 Md. 654, 671, 632 A.2d 1183 (1993). In Lee, the State's Attorney's Office mailed Notice of Intent to Seek Enhanced Penalties to the defendant. At that time, Maryland Rule 4-245(b) required that the State's Attorney "serve notice of the alleged prior conviction on the defendant or counsel . . . at least 15 days before trial in circuit court." Id. at 658, 632 A.2d 1183. The defendant averred that he never received such notice, and therefore was not properly served with the State's notice that it would seek enhanced penalties. See id. at 657, 632 A.2d 1183. The Maryland Court of Appeals rejected the defendant's argument, noting that pursuant to Rule 1-321(a) which pertains to the service of court pleadings, "[s]ervice by mail is complete upon mailing." Id. at 658, 632 A.2d 1183. More importantly, the Maryland Court of Appeals rejected the defendant's underlying argument that the term "service" required actual receipt, stating:

> If the drafters of the rules had wanted to guarantee that the defendant actually received a copy of the

> notice 15 days before trial, they would not have used the words "serves notice" in Rule 4-245. Rather the rule would have required personal service, certified mail, or some other means of both assuring actual receipt by the defendant and defining a point from which to measure time.

Id. at 665, 632 A.2d 1183.

The facts in each of these cases are analogous to the present Petition and, therefore, Respondents submit that this case warrants similar analysis. In each case, the Court examined the plain language of the statute in question and found no explicit requirement of receipt. Similarly, Section 2-204 as further explained by Section 2-215, does not require receipt. In addition, the Court in each case refused to read into the statutes an "implicit requirement" of receipt, recognizing that the Legislature could have included such requirements explicitly, if it so intended.

B. The Petitioner Now Alleges that the Court of Appeals Applied the Incorrect Statute in Deciding this Case When He Specifically Cited this Statute in His Questions Presented to the Court of Appeals Below.

At this point, the Petitioner argues that the Court should consider no less than three separate Maryland Regulations and two Maryland statutes as his basis that the Maryland Court of Appeals' decision was incorrect. However, the Petitioner did not raise arguments pertaining to any of these statutes or regulations before the Court of Appeals below. Specifically, the question that the parties presented before the Court of Appeals of Maryland was as follows: "When, under Title 2 of Maryland's Insurance Article, does the 30-day filing period for a petition for judicial review of an administrative decision begin?" In his

Petition, however, Petitioner argues that "[t]he decision of the lower court to use § 2-204(c) as the 'operative' statute is misplaced." Pet. 12. Such an argument is disingenuous at best, since the Petitioner's Petition for Certiorari to the Maryland Court of Appeals presented the question for review as follows: "Was the Circuit Court correct when it held that the thirty-day period in which a Petition for Judicial Review of a decision of the MIA may be timely filed begins upon mailing of the order, given the fact that all that is required by the operative statute, § 2-204(c) of the Insurance Article, is the mailing of the decision by regular first-class mail?" Centre Ins. Co., 397 Md. at 72, n.1, 916 A.2d at 727, n.1 (2007) (emphasis added).

Furthermore, the Petitioner's only case law basis for his argument that the thirty-day period should run from the date of receipt is the case of Plocher v. Commissioner of Public Safety, 681 N.W. 2d 698 (Minn. App. 2004), in which a Minnesota resident's procedural due process rights were violated following revocation of his driver's license because the notice mailed to the resident was unclear as to the beginning of the appeal period. The differences between these two cases are patently clear. First of all, the Plocher court, as with the Maryland Court of Appeals below, was reviewing a state law that had no application outside the state. The Plocher decision has no precedential effect on the Maryland courts. Second, the petitioner in Plocher actually raised the due process argument below, which Petitioner did not do in this case. Thus, the Plocher decision has absolutely no bearing on this matter and should be disregarded.

CONCLUSION

Petitioner has not established any compelling reasons for this Court to grant the Petition. Therefore, Respondents respectfully request that the Petition be denied.

Respectfully submitted,

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In The
Supreme Court of the United States

JAMES T. WALKER,

Petitioner,

v.

CENTRE INSURANCE COMPANY and
ZC STERLING INSURANCE AGENCY, INC.,

Respondents.

On Petition For A Writ Of Certiorari
To The Maryland Court Of Appeals

REPLY TO BRIEF IN OPPOSITION

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INTRODUCTION

The decision of the Maryland Court of Appeals should be reviewed and not be allowed to stand because it incorrectly suggests that the highest court in the State of Maryland, in its deliberations, can: 1) violate the Fourteenth Amendment to the U.S. Constitution by not considering the requirements set forth under Maryland's the Administrative Procedures Act and Maryland Insurance Administration's (MIA's) own regulations codified in Code of Maryland Regulations (COMAR) and 2) depart from the accepted and usual course of judicial proceedings by not adhering to common canons of statutory construction and interpretation. Furthermore, the decision should not be allowed to stand because it is incorrect.

Petitioner seeks this Court's review of three main issues. First, whether the Maryland Court of Appeals violated his due process rights pursuant to the Administrative Procedures Act (APA) Md. Code Anm., State Government § 10-201 and MIA's own regulations codified in Code of Maryland Regulations (COMAR), when it failed to determine whether he filed his petitions within 30 days from delivery of the MIA orders and whether the date he received the orders was the effective date. Second, whether the lower Court erred in utilizing Maryland Insurance Article §2-204 (c) as the operative statute for service of MIA orders resulting from administrative hearings. Third, whether, pursuant to Maryland Insurance Article §2-215 and COMAR regulations §§31.02.01.05B and 31.02.01.05C, the 30-day filing period for a petition for judicial review begins to run on the date the MIA order resulting from the hearing is mailed to or received by the affected party.

ARGUMENT

I. The Supreme Court Has Jurisdiction to Grant this Petition.

A. Petitioner was Denied His Due Process Rights at the Maryland Court of Appeals Level.

Respondents' assertions are wrong and mischaracterizes Petitioner's claims. Petitioner did not claim that his due process rights were violated at the Agency and Circuit Court Levels. He claimed that his federal due process violation arose from the Maryland Court of Appeals' decision. Pet 7-10. Pursuant to §10-221(b)(2) of Maryland's Administrative Procedures Act, a written statement of appeal rights must be included in the final order stating when the affected party should file an appeal. He asserts that that Court passed over the notice of appeals rights statement that he received and failed to determine as to whether he timely filed his petitions within 30 days after receiving the notice. Petitioner also claims that his due process rights were violated pursuant to COMAR Regulations §§§ 31.02.01.05B, 31.02.01.05C and 31.02.01.12. Pet 7-10. He asserts that, since MIA sent the orders by mail and he produced uncontroverted evidence showing when they were received, he was due a determination from the Court of Appeals of Maryland as to whether the date he received the orders was the effective date for filing a petition for judicial review in the Circuit Court. The Maryland Court of Appeals ignored these regulations in its final analysis, although they were raised and discussed in the Petitioner's brief and during oral arguments. The Maryland Court of Appeals recognized but essentially passed over the notice of appeals rights statement and concluded that the statement did not change its "analysis of the statutory law."

Petitioner was only able to find one case to support his due process claim. *Plocher v. Commissioner of Public Safety Plocher v. Commissioner of Public Safety*, A03-1572, 681 N.W.2d 698 (Minn. App. 07/29/04).

In *Plocher*, the Respondent Commissioner of Public Safety revoked appellant Mark Allan Plocher's driver's

license after police stopped Plocher for a traffic violation and a urine sample tested positive for controlled substances. The commissioner mailed Plocher a notice and order of revocation. The notice contained, in relevant part, the following statement:

> " Petition for Judicial Review-You have the right to petition for a judicial review. Petitions must be filed in writing as outlined *MINNESOTA STATUTE,SECTION 169A.53, SUBDIVISION, 2*, in the county in which the incident occurred and within 30 days from receiving a notice and order of revocation...."

Plocher's due-process claim was that he was misled by the incorrect statement in the notice that he had 30 days after receiving the notice to petition for judicial review. The *Plocher* court agreed and concluded that:

> "After the commissioner notified Plocher that he had 30 days from receiving notice of revocation to file a petition for judicial review of the revocation, it would be indefensible to allow Plocher's petition for review to be dismissed as untimely solely because it was not filed within 33 days after the notice was mailed. At a minimum, Plocher is entitled to a determination whether he filed his petition for review within 30 days after he actually received the notice and order of revocation. We, therefore, hold that dismissing Plocher's petition for judicial review as untimely because the petition was not filed within 33 days after the notice of revocation was mailed violated Plocher's right to due process of law, and we remand to permit the district court to determine whether Plocher served and filed his petition within 30 days after receiving the notice and order of revocation."

In the present case, pursuant to the Administrative Procedures Act, the administrative law judges mailed

Petitioner a notice and final order. The notice indicated that he had within 30 days of delivery of the notice to file a petition for judicial review of the decision. Because of that time requirement, he was due to a determination from the Maryland Court of Appeals as to whether he filed his Petitions in a timely manner.

B. The Supreme Court Can Entertain Petitioner's Due Process Claim, Since it Involves Plain Error Unchallenged in the State Court.

The Respondents have a valid argument with respect to the timely presentation requirements for issues in the lower courts. However, it is well established that this Court has jurisdiction to review cases involving plain error unchallenged in the state court when necessary to prevent fundamental unfairness and injustice. *Wood v. Georgia, 450 U.S. 261, 265, n. 5 (1981).* See also, *Vachon v. New Hampshire, 414 U.S. 478 (1974.* This Court has also recognized exceptions to the timely presentation requirement where the "question is created by an unexpected decision of the highest state court, "Stern and Gressman p. 183. Petitioner asserts that his due process claim is ripe for review because the Maryland Court of Appeals clearly erred in this instance.

C. Even assuming, arguendo, that Petitioner did not Timely Raise His Federal Due Process Claim, Respondents did not Refute and Concedes that the Maryland Court of Appeals Construed §§2-204 and 2-215(d)(1) of the Maryland Insurance Article in a Manner Which Requires this Court's Review

This Court still has jurisdiction to review this case because of how the Maryland Court of Appeals construed §§2-204 and 2-215(d)(1). It is well established that this Court has jurisdiction to review cases when courts have so

departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. Sup Ct. Rule 10 (a). In addition to his due process rights claim, Petitioner asserts that the Maryland Court of Appeals, in its deliberation, failed to adhere to common cannons of statutory construction and interpretation and reached its conclusion through faulty analysis. Pet 10-16.

In their reply brief, Respondents' opposition to Petitioner's many claims is most notable for what is concedes. First, Petitioner claims, but Respondents do not dispute, that the Maryland Court of Appeals' decision conflicts with and renders superfluous relevant Maryland Insurance Statutes and COMAR Regulations. The long standard canon that "statutory text should be read so that no word, clause, sentence or phrase is rendered superfluous or nugatory," was not adhered to by the Maryland Court of Appeals when its ruling made the phrase in §2-215(a)(1) "may be taken only from an order resulting from a hearing" and the phrase in §2-215(d)(1) "to serve on the person entitled to receive it" nugatory. *Collins v. State,* 383 M d. 684, 688, 861 A.2d 727, 730 (2004) Pet 10-12. The canon was also not adhered to when the Court's ruling made the phrase "service of notices, orders and other documents is effective upon receipt" and the phrase " the final order is effective when issued unless a different date is specified in the decision" nugatory. Pet 13-14. Second, Petitioner claims but Respondents do not dispute that the Maryland Court of Appeals failed to go beyond the words of the relevant insurance statutes to determine legislative intent with regards to the use of Insurance Article §2-204(c) in the context of 2-215(d)(1). *Collins v. State,* 383 M d. 684, 688, 861 A.2d 727, 730 (2004); *Deville v. State,* 383 Md. 217, 223, 858 A.2d 484, 487 (2004). The briefs filed by each party, the Maryland Court of Special Appeals ruling and the oral arguments presented before the Maryland Court of Appeals indicated clear differences between the parties in their interpretations

of how the above statutes were to be applied. However, despite these apparent differences, that Court failed to use all the resources and tools of statutory construction that were available to it to construe and interpret the law, such as, other provisions of the Insurance Article, the COMAR provisions, MIA procedures, and the oral arguments. Third, Petitioner claims but Respondents do not dispute that the Maryland Court of Appeals read into the Insurance Article what the Legislature apparently left out. That Court's ruling was based on the argument that requiring "service" under the article could lead to unreasonable or illogical results, because service might never be accomplished." Pet App. 7-10. There are no provisions in the Insurance Article to address this issue. By making this assumption that the Legislature intended that the statutes provide for situations when the affected party is not served a notice, the Maryland Court of Appeals violated a standard canon which prohibits it from assuming the authority to read into an act what the Legislature apparently deliberately left out. *Price v. State,* 378 Md. 378, 387, 835 A.2d 1221, 1226 (2003); *Goff v. State,* 387 Md. 327, 342, 875 A.2d 132, 141 (2005); *Pete v. State,* 384 Md. 47, 57 -58, 862 A.2d 4 19, 425 (2004). Fourth, Petitioner claims but Respondents do not dispute that the Maryland Court of Appeals' decision to use of 2-204(c) as the operative statute for service of orders resulting from hearings under the insurance article leads to illogical or absurd results. The standard which stipulates that courts should "avoid a construction of the statute that is unreasonable, illogical, or inconsistent with common sense was not adhered to by the Maryland Court of Appeals. *Blake v. State,* 395 Md. 213,224,909 A.2d 1020, 1026 (2006). Applying its construction utilizing §2-204(c) for cases involving homeowners or persons who normally don't or would not be expected to have a place of business, would lead to absurd and illogical results. The statute does not allow for service of orders resulting from hearings to homeowners who do not own a place of business and therefore these

individuals would never be served. Finally, Petitioner claims and Respondents apparently do not dispute that the Maryland Court of Appeals' decision conflicts with the purpose and intent of Maryland Rule 7-203 as a whole. When that Court's ruled that §2-204(c) of the insurance article provides an exception to 7-203(a)(3), in that the time period for filing a petition for judicial review of an order resulting from hearings begins when the order is *mailed*, not when it is received. Section 2-204(c) was not meant to provide time requirements for filing a petition for judicial review in the Circuit Court. It was meant to provide for methods to be used for service of orders [compliance].

II. THIS PETITION DOES NOT QUESTION THE MARYLAND COURT OF APPEALS' AUTHORITY OVER MARYLAND STATE LAW

A. Petitioner Questions the Manner by Which the Maryland Court of Appeals Interpreted the Law.

Petitioner does not question the Maryland Court of Appeals' authority over Maryland State Law, he questions the manner by which it construed and interpreted the law. As stated in the above, he asserts, and the Respondents did not refute, that the Maryland Court of Appeals construed §§2-204 and 2-215(d)(1) of the Maryland Insurance Article in a manner which requires this Court's review. The Court did not adhere to the common canons of construction and interpretation and presented a faulty analysis.

B. Respondents Assertion that Petitioner did not Raise Arguments Pertaining to the Two Insurance Statutes and Maryland Regulations before the Maryland Court of Appeals below is Incorrect.

The records from the Court below clearly show that Petitioner did raise arguments pertaining to the two insurance statutes and Maryland Regulations before the Maryland

Court of Appeals. The relevant issues that he asked that Court to reconsider, in his "Motion for Reconsideration and Modification of Opinion," are listed below:

1. Whether it erred in utilizing §2-204 (c) of the Insurance Article as the operative statute for service of MIA orders resulting from hearings of contested cases;

2. Whether it did not adhere to this Court's own canons of statutory interpretation and construction;

3. Whether its ruling conflicts with and renders §2-204(c) as whole, §2-204(c)(2), §2-215(a)(1), §2-215(d)(1) of the Insurance Article and COMAR Regulations §§§ 31.02.01.05B, 31.02.01.05C and 31.02.01.12 superfluous and leads to illogical and absurd results;

C. Respondents' Assertions that Petitioner Cited §2-204 of the Insurance Article in his Question Presented to the Maryland Court of Appeals is Incorrect.

Respondents' statement that Petitioner cited 2-204 (c) in his question is totally false and it shows a complete disregard for the truth. The Respondents filed a Petition for Certiorari to the Maryland Court of Appeals, not the Petitioner, (See Opposition brief, pg 2, App.) and they were the ones who presented the above question for review. Petitioner never cited §2-204 in the question he presented to the Maryland Court of Appeals below. The records will also show that Petitioner opposed Respondents' Writ for Certiorari and raised objections to that question in his opposition brief and during oral arguments before the Maryland Court of Appeals. In his opposition brief and during oral arguments, Petitioner asked the Maryland Court of Appeals to consider the following question instead:

> "Was the Court of Special Appeal correct as a matter of law when it held that the thirty-day perio d for filing a Petition for Judicial Review of an administrative

decision of the Maryland Insurance Administration begins when the petitioner receives the notice of the order or decision."

D. The Maryland Court of Appeals Decision Below is Incorrect.

The plain language of Maryland Insurance Articles §§2-215 and COMAR regul ions §§31.02.01.05B and 31.02.01.05C could not be more clear. Section 2-215 (a)(1) states, in relevant part, that:"an appeal under this subtitle may be taken only from an *"order resulting from a hearing."* Section 2-215 (d)(1) governs the time requirements for filing a petition for judicial review of the orders with the appropriate circuit court---"within 30 days after (1) the order resulting from the hearing was *served on the persons entitled to receive it*." COMAR Regulations §§31.02.01.05B and 31.02.01.05C provides the "service" requirements for orders resulting from hearings under the statutory scheme of Title 2 of the Insurance Article. The plain language of these regulations is clear and unambiguous and reflects the intent of the Legislature. The COMAR regulations stipulate clearly that "service" of orders may be accomplished by many methods, but is *" effective upon receipt."*

The plain language of Maryland Insurance Articles §2-204(c) could also not be more clear. The legislature is presumed to have meant what is said and said what it meant in providing service requirements for orders [compliance] under this statute *Arundel Corp. v. Marie,* 383 Md. 489, 502, 860 A.2d 886, 894 (2004). The Maryland Court of Appeals use of §2-204 (c) of the Insurance Article as the "operative" statute for service of orders resulting from hearings is misplaced. The statute stipulates that non-hearing or compliance orders may be served by mailing or delivery them, not just mere mailing, as implied by the Maryland Court of Appeals' ruling. COMAR regulation

§31.02.01.05BC stipulates that orders resulting from hearings are effective only upon receipt.

Respondents and the Maryland Court of Appeals rely on that Court's decisions in Renehan v. Publich Serv. Comm'n of Maryland and Lee v. State, where it held that because the term "service" does not automatically require or imply receipt,." §2-204 (c) defines "service" as mere *mailing*. Renehan v. Public Serv. Comm'n of Maryland, 231 Md. 59, 188 A.2d 566 (1963). Lee v. State, 332 Md. 654,632 A.2d 1183 (1993). Petitioner disagrees and argues that the use of these two cases to analyze §2-204 (c) is misplaced. Their results do not dictate the outcome here. In both *Renehan* and *Lee*, as the Maryland Court of Appeals concluded, "there is no requirement of receipt of the notice to be effective." However, in this case, the requirement of receipt of orders resulting from hearings is found in the COMAR Regulation, specifically in §31.02.01.05C.

CONCLUSION

For the foregoing reasons and those stated in the Petition, Petitioner respectfully submit that his Petition for a Writ of Certiorari should be granted. Petitioner also submit that summary reversal of the Maryland Court Of Appeals decision is appropriate in this case.

RESPECTFULLY SUBMITTED, this 23 day of September 2007.

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